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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1032nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 November 1990, at 10 a.m.

Chairman: Mr. LALLAH

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Morocco

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Morocco (CCPR/C/42/Add.10)

1. At the invitation of the Chairman, Mr. Benhima, Mr. Atmani, Mr. Hilale and Mr. Laghmari (Morocco) took places at the Committee table.

2. Mr. BENHIMA (Morocco), introducing his country's second periodic report (CCPR/C/42/Add.10) said that it had been submitted in March 1990 and had been produced jointly by several ministerial departments on the basis of the Committee's guidelines. It demonstrated the Moroccan Government's desire to continue its dialogue with the Committee, which had begun in 1981, and was proof of Morocco's interest in the Committee's activities.

3. Being aware of the method used by the Committee when considering periodic reports, he would confine his introductory statement to a review of national and regional developments which had occurred since the submission of the initial report and which had not been covered by the second periodic report.

4. A major event in 1989 at the regional level, which was expected to bring progress and prosperity to a vast population with close historical, religious and cultural ties, had been the founding of the Union of the Arab Maghreb consisting of Mauritania, Morocco, Algeria, Tunisia and the Libyan Arab Jamahiriya. The founders of the Union attached great importance to the cause of human rights, and the Declaration proclaiming the Union reiterated the determination of the five Heads of State concerned to work with the international community to establish an international order in which justice, dignity, freedom and human rights prevailed.

5. At the national level, in conformity with articles 1 and 25 (a) and (b) of the Covenant, local elections had been held in 1983 for the municipal and communal councils, and in 1984, legislative elections had also been held for the 306 deputies to the House of Representatives. In that connection, article 43 of the Constitution had been amended as a result of a referendum held on 23 May 1980 concerning the term of office of the legislature, which had been extended from four to six years in line with that of the local and professional assemblies. In addition, as a result of the referendum held on 1 December 1989, the term of the current Parliament had been extended by two years.

6. The right to take part in the conduct of public affairs was exercised through the 860 local communities or communes, and the Government had adopted a set of measures designed to enhance the participation of those communities in the country's economic and social development by strengthening the senior and specialized echelons and by allocating to them 30 per cent of the value added tax, to guarantee their financial autonomy.

7. It had been stated in paragraph 90 of the report that the commune was considered to be "the school of democracy" and was an effective structure not only for promoting the country's pluralist, planned and responsible decentralization, but also the development and expansion of local freedoms and of territorial units which enjoyed administrative autonomy.

8. The information contained in the report showed how Morocco was discharging its obligations under the Covenant and highlighted the way in which it exercised and protected human rights. In that connection, two important decisions had recently been taken to strengthen the rule of law and enable citizens to defend their rights vis-à-vis the administration, the authorities and the State itself.

9. In addition to the three human rights organizations referred to in paragraph 3 of the report, King Hassan II had established a Consultative Council for Human Rights under article 19 of the Constitution. In a statement to the Moroccan people on that occasion, the King had drawn attention to the pursuit of the democratic process since independence and added that Morocco would not be a true constitutional State until each Moroccan had the means to defend his rights against any adversary, and that Morocco should take advantage of the current climate of world peace to formulate laws that were consistent with its own situation and reflected the reactions of its people.

10. The other decision, announced on 8 May 1990, concerned the establishment of administrative tribunals to consolidate the rule of law.

11. The bill establishing those tribunals, stated that they would enhance the court system and constitute a specialized hierarchy within the judiciary. They would operate free of charge according to a simplified procedure with the final objective of ensuring administrative justice and providing individuals with remedies whenever they were victims of abuses of power or prejudice on the part of the administrative authorities. Those tribunals would also be competent to hear disputes arising from the application of certain laws requiring administrative intervention which might infringe the rights of citizens, and relating to matters such as election, expropriation, taxation and pensions.

12. In recent years human rights problems had been given high priority by the international community, in the belief that a free, just and prosperous society was closely linked to the promotion and respect of human rights. Anxious to participate in international co-operation in that area, Morocco had made human rights one of its major goals, pursued by its public authorities, parliament, political parties, universities, trade unions and human rights associations alike.

13. At the parliamentary level, concern for the protection of human rights was evident in the questions put to the Government and in parliamentary bills. Political parties, trade unions and human rights associations frequently organized symposia and round-tables on the difficulties encountered in implementing human rights. The Academy had also devoted its October 1984 session to studying the scope of the right to self-determination.

14. Most of the international human rights instruments adopted by the United Nations General Assembly were publicized by the mass media, and Morocco's second periodic report had been published by the national press in August 1990. Instruments ratified or acceded to by Morocco were published in the Official Bulletin, the purpose of publishing such instruments, laws and measures taken by the Government being to inform the public of its rights.

15. In that connection, a group of non-governmental organizations and political parties was currently working on a draft National Charter of Human Rights.

READEX FICHE

16. The CHAIRMAN invited the delegation of Morocco to reply to the questions raised in the various sections of the list of issues.

I. Constitutional and legal framework within which the Covenant is implemented (art. 2 (2) and (3))

"(a) What is the status of the Covenant in relation to the Moroccan Constitution?

(b) Are the provisions of the Covenant directly enforceable; have there been any actual cases where court decisions were based on the Covenant; has a law ever been disregarded by a court on grounds that it was contrary to the Covenant?

(c) Please provide additional information concerning the composition and functions of the Moroccan League for the Defence of Human Rights, the Moroccan Human Rights Association and the Moroccan Human Rights Organization and illustrative examples of their activities.

(d) Factors and difficulties, if any, affecting the implementation of the Covenant.

(e) Please provide information on activities relating to the promotion of greater public awareness of the provisions of the Covenant.

17. Mr. ATMARI (Morocco), replying to question I (a), said that the Covenant had been ratified by Morocco on 3 August 1979, under article 31 of its 1972 Constitution.

18. The civil and political rights guaranteed in the Covenant were granted under the Constitution to all Moroccan citizens without distinction as to race, ethnic, linguistic, religious or political group, or sex. With the aim of ensuring human dignity and respect for equal rights based on freedom and justice, Moroccan law included a number of texts specifying rights and laying down safeguard procedures. In every subject area there was a code or special law (for example, Dahirs on the press, associations, trade union law, civil and criminal procedures, individual ownership, and civil status and succession). Those texts covered all the provisions in the Covenant and remedies could be exercised in cases of abuse of authority or infringement of personal integrity or integrity of property against individuals or legal persons such as the State. Claims for compensation for damages could be brought under the Dahir of 12 August 1913, whose provisions had been supplemented by the establishment of administrative tribunals to deal with matters relating to the public authorities. In addition, a Consultative Council for Human Rights had been created on 8 May 1990 to monitor the activities of local authorities and assure citizens of direct recourse to the King. That Council included officials of the Ministry of Justice and was presided over by the First President of the Supreme Court.

19. In reply to question I (b), he said that the application of the provisions of the Covenant by the judiciary was a problem of judicial technique. The courts had an obligation in all cases to apply the provisions of the Codes of Criminal or Civil Procedure and the substantive law concerning the protection of the right invoked. The provisions of Moroccan law, which were progressive and aimed at safeguarding human dignity, were identical to

those of the Covenant, the provisions of which were therefore implicitly applied by the courts. Parties and their lawyers frequently invoked the principles enshrined in the Covenant, which in turn ensured that judges had to base themselves on those principles in formulating their views.

20. In reply to question I (c), he said that public gatherings, the press and the right of association were governed by the Dahir of 15 November 1958. The Moroccan League for the Defence of Human Rights, the Moroccan Human Rights Association and the Moroccan Human Rights Organization had all been set up under that Dahir and, having deposited their statutes with the administrative and legal authorities, were free to exercise their activities as described therein. The former two organizations had been set up by two political parties represented in Parliament. The Moroccan Human Rights Organization consisted of independent persons, lawyers, jurists, academicians and academics. The three organizations pursued their activities at three different levels: at the administrative and judicial level, by sending delegations and making direct or written interventions; at the parliamentary level, by reporting human rights violations to deputies; and at the public level, by contact with the families of detainees and items published in newspapers. In that connection, it should be noted that delegations from Amnesty International had visited Morocco several times and had had direct contact with those organizations.

21. Turning to question I (d), he said that Morocco recognized its obligation under article 40 (2) of the Covenant to report on any factors and difficulties affecting the implementation of that instrument. Morocco was anxious to respect the dignity of each of its citizens and all other persons residing in its territory. It had never encountered any obstacles which might affect the public freedoms or civil and political rights of its inhabitants. The Government was not empowered either to suspend or discontinue the implementation of a law, convention or covenant. A law could be blocked, amended or supplemented only by another law approved by Parliament.

22. As to question I (e), the Covenant was widely publicized in Morocco. Its ratification in 1979 had had to pass through the Council of Government, the Council of Ministers and the House of Representatives. The full text of the Covenant had been published in the Official Bulletin and the press took every opportunity to mark the anniversary of the founding of the United Nations by reproducing the text of the Universal Declaration of Human Rights and the Covenant. In the past five years, the key principles of the Covenant - non-discrimination, equality of the sexes and of rights, conditions of prisoners, particularly prisoners of opinion, freedom and security of the person, right to a fair trial, freedom of movement, religion, expression, assembly and association, protection of women, children and minorities and equality in public office - had all been discussed frequently by the press and at seminars and symposia and had been the subject of studies by universities, the Royal Academy and the National Institute for Judicial Studies. Students of law could also write their dissertations on a freedom or right recognized by an international human rights instrument. A consultative body had, since May 1990, been entrusted with the task of monitoring respect for human rights.

23. Mr. EL-SHAFEI, after welcoming the Moroccan delegation, expressed his appreciation for its introductory statement and answers to section I of the list of issues. The second periodic report of Morocco was succint, reflected developments in the area of human rights, and served as a complement to the initial report.

24. The Committee's main concern was to ascertain the extent to which human rights were implemented and it performed its task bearing in mind the history and civilization of the country concerned, since they formed the basis for the relationship between the individual and the State. In that connection, Morocco continued to be governed to a large extent by pre-independence legislation, which remained in force in spite of efforts to update it.

25. Morocco was currently being criticized for its practices in respect of certain rights and freedoms provided for under the Constitution which added to the Committee's task. It therefore needed to know to what extent those criticisms were justified, and the Moroccan delegation had an obligation to co-operate with the Committee in clarifying that point. The Committee was not a court of law but was interested in conducting a constructive dialogue with States parties in order to achieve the shared objective of ensuring that civil and political rights and freedoms were respected.

26. Turning to section I of the list of issues, he asked whether the Covenant had become an integral part of Morocco's domestic legislation and whether Moroccan citizens were entitled to invoke the provisions of the Covenant in bringing complaints about any injustices they might have suffered, whether Morocco accepted the principle of the precedence of international law over domestic law in the event of a conflict between the two, and whether the Moroccan courts had rendered any judgements based on the provisions of the Covenant. Examples of such judgements would be useful to the Committee in ascertaining the status of the Covenant and the extent of its application.

27. He also wished to know whether there was any possibility of recourse to the Moroccan courts in respect of violations of rights not recognized in domestic law but guaranteed by the Covenant, such as the right to life enshrined in article 6 of the Covenant, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, embodied in article 7 of the Covenant, the rights and freedoms established in article 10 of the Covenant, and the right to a fair trial accompanied by all necessary safeguards, as stipulated in article 14 of the Covenant. Were the Moroccan authorities giving any thought to amending the Constitution to take account of those rights, and was there any intention of giving effect to the constitutional provision for the holding of a referendum?

28. On acceding to the Covenant, Morocco, like any other State party, had an obligation to review its existing legislation to ensure its conformity with the Covenant. Would any adjustments be carried out through the promulgation of new legislation or did the courts themselves have the power to abrogate legislation not in conformity with the Constitution or the Covenant?

29. He also wished to know how independent the judiciary was, whether a judge could be dismissed from office, whether everyone had access to the courts and what was the purpose of establishing communal or district courts. Lastly, were judgements subject to appeal or annulment?

30. With regard to the establishment of the Moroccan League for the Defence of Human Rights, the Moroccan Human Rights Association and the Moroccan Human Rights Organization, the Committee would like more information on the facilities provided by the Government to help those organizations discharge their task and on the Government's attitude to those organizations' demands,

endorsed by the Moroccan Bar Association, including demands for the promulgation of a National Charter of Human Rights and for amendments to the Constitution to enable the judiciary to verify the constitutionality of Moroccan laws.

31. With regard to the promulgation of the Royal Decree of 20 April 1990 establishing a Consultative Council for Human Rights, the Committee would welcome further information regarding the composition and powers of that Council and wished to know whether it was competent to look into possible violations of human rights or abuse of power by Morocco's executive authorities.

32. In addition, he asked whether the Moroccan Government intended to ratify the Optional Protocol which gave the Committee the right to consider individual complaints of violations of the human rights and freedoms established in the Covenant, and what steps the authorities had taken to disseminate the text of the Covenant and other human rights instruments among the general public, particularly individuals engaged in defending human rights. Finally, in the view of those authorities, what difficulties impeded the implementation of the articles of the Covenant?

33. Mr. AGUILAR URBINA welcomed the Moroccan delegation and its assurance as to the State party's desire to continue the dialogue begun in October 1981 and to join in international co-operation in the field of human rights. He hoped that the forthcoming dialogue would help to ensure the full implementation of the Covenant in Morocco. Mr. El-Shafei had rightly pointed out that the Committee was not a court of law but a group of experts whose task was to help the State party to ensure respect for the rights provided for in the Covenant. The second periodic report had, unfortunately, been submitted nearly four years late and there had been no discussion between the Committee and the State party for nine years. That situation had been exacerbated by the brevity of the report, which failed to take account of the Committee's general comments, designed to facilitate a fruitful dialogue. The report failed to supplement the initial report as it should have done or to describe the situation with respect to the implementation of the Covenant, and most of the questions and doubts raised during the consideration of the initial report had remained unanswered. He hoped that the Moroccan delegation would provide answers to all the questions raised in the list of issues.

34. He noted that the Royal Consultative Council appeared to have no power to ensure the implementation of human rights legislation, although the King had stated that it had been established to provide prompt and effective assistance to citizens who experienced problems with the State police or administrative services. He asked how the members of the Council were appointed, what was its composition, what proportion of its membership could be deemed independent of the Government, what balance there was between independent members and Government members, what political powers it had, from what organizations its members were drawn and how its independence was guaranteed. He further asked whether the public was aware of the Council's existence and of the results of its fact-finding operations and whether citizens and other persons under Moroccan jurisdiction could have recourse to it. If the Council concluded that there had been a violation of human rights and it was not empowered to enforce compliance with the relevant provision, what means were available to the victim to secure redress? To what authority did the Council submit the results of its fact-finding activities and was that authority required to act on those results?

35. A democratic system was the one best equipped to safeguard human rights, and the best policy was a system of checks and balances. Article 33 of the Moroccan Constitution stated that the King presided over the Supreme Council of the Judiciary, article 70 that the King could dissolve by Dahir the House of Representatives, article 25 that the King presided over the Council of Ministers and article 26 that the King promulgated the law, while article 28 provided that the King could address messages to the House of Representatives and the Nation and that the content of those messages could not be the subject of debate. He asked whether the King was accountable for his acts to any State body, what relationship there was between the King and the Constitution, and whether the constitutionality of the laws promulgated by the King could be challenged. If a person subject to Moroccan jurisdiction considered an act of the King to be contrary to the Constitution, what remedies were available? Was the King subject to the provisions of the Constitution, and what would happen if he bypassed any of those provisions?

36. Since article 26 of the Constitution provided that the King promulgated the law, whereas article 44 stated that the laws were adopted by the House of Representatives, he would be interested to know which of the two authorities prevailed if a difference arose between them.

37. He asked how the independence of the judiciary was guaranteed when, according to article 33 of the Constitution, the King presided over the Supreme Council of the Judiciary and appointed the members of the judiciary by decree.

38. It was indicated in paragraphs 36 and 37 of the report that the Covenant was directly applicable in Morocco, but his doubts in that regard had only been compounded by the comments of the representative of Morocco. According to article 31 of the Constitution, the King was empowered to sign and ratify treaties, and any treaty that could call in question the provisions of the Constitution was adopted according to the applicable procedures for amending the Constitution. He asked whether that meant that a treaty to which Morocco was a party had the status of a constitutional rule, so that a law that was contrary to the Covenant would be deemed unconstitutional. Bearing in mind that, under Moroccan law, international law was said to be paramount, would any act of an official that was contrary to the Covenant similarly be considered unconstitutional? If so, could the official be taken to court for a violation of the Constitution or of the Covenant? Further, could a treaty that was contrary to the Constitution be brought into force by a simple ratification or accession by Morocco or would it require a constitutional reform? What remedy would be available to a Moroccan citizen to ensure that the Covenant prevailed in the case of conflict? It was stated in paragraph 36 of the report that the Moroccan legal system was based on legislative texts which guaranteed a number of rights and freedoms. Unfortunately, however, the legislation failed to provide for all the rights established in the Covenant. He therefore wished to know what remedy was available to individuals under Moroccan legislation to ensure that their rights were protected in compliance with the Covenant, and what happened when Moroccan legal rules were contrary to the Covenant. Could there be a simple abrogation by the courts or the Supreme Council of the Judiciary, or did the matter have to go before Parliament?

39. It had been indicated that the Moroccan Bar Association, the Association of Moroccan Jurists and the three organizations mentioned in paragraph 3 of the report had ratified a human rights charter in which it was stated that there was an effective absence of protection of human rights in Morocco and that their implementation was still limited. He would like to hear the comments of the Moroccan delegation on that statement in view of what was said in paragraphs 36 and 37 of the report. Moreover, article 2 of the Constitution provided that sovereignty belonged to the Nation. He asked what was understood by the word "Nation" in that context, how the Nation exercised its sovereignty and whether it could initiate any change in the constitutional system or the system of government, and if so, by what means.

40. Ms. CHANET joined in welcoming the Moroccan delegation but expressed regret at the long period that had elapsed since the submission of the initial report, at which time she had not been a member of the Committee. The long hiatus in the dialogue had complicated the Committee's task. Moreover, although the report provided some information on the Constitution and the laws in force, little was said about what was being done in practice or about the conditions for the specific application of the Covenant throughout the territory. In his introduction, the representative of Morocco had provided information on new legislative provisions, and she was confident that the delegation would provide further information in response to the Committee's questions during the discussion.

41. It was stated in paragraph 37 of the report that the provisions of the Covenant automatically applied and could be quite legitimately invoked before the courts. She failed to understand how that could be so when Moroccan legislation, and particularly the Constitution, was at variance with the Covenant. For example, the Constitution failed to provide for certain fundamental rights guaranteed in the Covenant such as the right to life and the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment. If those rights were provided for in other laws, perhaps the delegation could say what those laws were and how they were applied, and give some practical examples of judicial decisions reflecting the specific rights covered by the Covenant.

42. Article 3 of the Constitution provided for a multi-party system, whereas article 101 stated that there could be no constitutional revision of the monarchical State system or of the provisions with respect to the Muslim religion. Did that mean that a political party could not campaign for a system other than the monarchical system or a State religion other then Islam, or was the prohibition at the constitutional level not directed at the activities of the political parties, in which case could they militate in favour of another constitutional form?

43. She was particularly interested in the establishment of the Consultative Council for Human Rights, since an analogy had been drawn between it and the corresponding Council in France, of which she was a member. She would like to know something about its purposes and membership. Did the members enjoy immunity, what was its competence, did it deal with individual requests or complaints, what publicity was given to its work, were its opinions published and could members of the press attend its meetings?

44. Lastly, she asked whether Morocco intended to accede to the Optional Protocol.

45. Mrs. HIGGINS welcomed the Moroccan delegation and the introductory statement by its leader. There were a number of gaps in the report which she hoped could be filled during the dialogue. In a statement of 8 May 1990 reported on television and radio, the King of Morocco had referred to international organizations that came in and imposed supervision as if Morocco was still a protectorate. The International Covenant on Civil and Political Rights was a treaty to which the Kingdom had voluntarily become a party, and the Committee's task under it was to assist in the implementation of human rights. In becoming a party to a treaty, the first thing a State normally did was to check its domestic legislation to ensure that it was in conformity with that treaty, and if necessary to make consequential amendments. A number of members of the Committee had alluded to the fact that the Moroccan Constitution appeared to be deficient in that regard. She had noted, for example, that articles 6, 7, 10 and 14 of the Covenant were not reflected in the Constitution. It was indicated in paragraph 62 of the report that article 14 of the Covenant was reflected in the Constitution by reference to article 5 of the Constitution, which stated that all Moroccans were equal before the law. That was incorrect, since equality before the law was covered by article 26 of the Covenant, whereas article 14 dealt with the details of providing a fair trial, which did not appear in the Constitution. In the very brief provisions of the Constitution regarding human rights, it was stated that no restriction could be placed on the exercise of the freedoms concerned except by law, but there was nothing to show what limitations the law might impose within the constitutional framework. The Covenant required not only that any limitations must be prescribed by law but that they must be subject to very rigorous conditions. That requirement was not reflected in the Constitution, and she would welcome a comment on it by the Moroccan delegation.

46. With respect to the National Charter of Human Rights ratified in February 1990 by various human rights organizations, the Moroccan Bar Association and other legal bodies, she would appreciate a general response from the Moroccan delegation as to the Government's likely attitude to the suggestions in that Charter on the action needed to make progress in human rights.

47. She understood that the Royal Consultative Council had three working groups, one of which dealt with external relations with regard to human rights and presumably with non-governmental organizations. She had seen advertisements by the Moroccan Government denouncing certain international organizations and would like to know whether that approach was likely to continue and whether the working group of the Royal Consultative Council was dealing with that issue. She would appreciate any information available in that regard.

48. Mr. FODOR welcomed the delegation of Morocco. There had been a very considerable delay in the submission of the report, which meant that the reporting period covered nearly 10 years. The Committee's guidelines had been followed as to format, but very little information on legislative developments over the past decade had been given. The report referred back to the initial report and various provisions of the 1972 Constitution were quoted, but little was said about the laws and practices applied in the implementation of the Covenant, and that made it difficult to determine the extent to which the State party was protecting rights under the Covenant in practice. He expressed appreciation to the representative of Morocco for his introductory comments and the hope that the gaps would be filled during the discussion.

49. He asked who had initiated and established the three human rights bodies referred to in paragraph 3 of the report, whose interests they served and whether they were private organizations or organizations established by the authorities in order to promote the protection of human rights or to protect the interests of private persons.

50. Secondly, as pointed out by other speakers, the Constitution provided for relatively few basic rights of the individual in comparison with the Constitutions of other States. He asked whether its authors had taken any account of the provisions of the Covenant and why so little progress had been made in providing rights under the Constitution during the past 28 years.

51. Thirdly, he asked how the clauses of the Covenant could be directly applied by a judge when there were no provisions on procedure.

52. Fourthly, he wished to have some information as to the precise competence of the constitutional chamber of the Supreme Court compared with the competence of a constitutional court. Nothing was said on that point in the Constitution, but it appeared to be left to the organic laws.

53. Lastly, he wished to know whether any amendments had been made to the laws as a result of Morocco's accession to the Covenant.

54. Mr. PRADO VALLEJO joined with previous speakers in welcoming the high-level Moroccan delegation, whose presence would make it possible to have the constructive dialogue needed in view of the late submission of the report and the problems that must inevitably have arisen during so long a period with respect to the implementation of legislation governing the rights provided for in the Covenant.

55. He had noted that Morocco had good legislation, but there was a vast difference between legislation and what was done in practice.

56. Secondly, he was concerned about the fact that the existing legislation could be changed by simple decree. That gave rise to problems, because little was known about the real situation in the country, and any change of legislation by a decree could prevent that legislation from having the desired effect. Morocco had taken a good step forward with the establishment of the Consultative Council for Human Rights. As the head of a similar institution in his own country, he would like to have more information on that body. It appeared that it would be difficult for it to be independent from the executive since, unlike the body under his direction, whose independence was guaranteed, it was composed of Ministers of State and other officials.

57. When the Royal Consultative Council had been set up in April 1990, it had decided, against the wishes of some of its members, that it would not intercede on behalf of political prisoners. That decision made him doubt whether the Council could be effective at all.

58. Paragraph 9 of the report (CCPR/C/42/Add.10) stated that discrimination on the grounds of race, colour, sex, etc. was unknown in Morocco. However, the list did not include political opinion, a ground for non-discrimination specifically mentioned in article 2 of the Covenant. He would welcome an explanation from the Moroccan delegation on that point.

59. Paragraph 10 of the report stated that the Moroccan Constitution guaranteed the rights of aliens on the same footing as those of citizens, provided that the aliens observed the law. That seemed to imply that aliens who committed an offence would be denied their fundamental human rights, which was certainly not the case in most countries. He would welcome more information on that matter.

60. Mr. MYULLERSON thanked the delegation of Morocco for the report, which presented a fairly complete picture of legislation in the country, but gave few details or statistics about the implementation of the law in practice. Like other members, he would welcome more information about the human rights organizations referred to in paragraph 3 of the report: on what basis had they been set up, who were their members, what issues did they deal with and what autonomy did they have?

61. The Moroccan representative had stated that Morocco had had no difficulties in implementing the provisions of the Covenant: if that were indeed so, Morocco's case would be unique in the Committee's experience. He had been interested to note that the three human rights organizations mentioned in the report had been signatories of the National Charter of Human Rights, published in April 1990, which had expressed concern about the situation of human rights in Morocco. The authors of the Charter had noted the continued use of legislation from the colonial period to suppress individual and group freedoms, the creation of tribal and provincial adjudications which were inconsistent with the right to a fair trial, and incidents of physical coercion in civil cases. What was the Government's view of such open criticism of its activities?

62. Mr. WENNERGREN thanked the Moroccan delegation for its succinct report, although he would have liked to see more information about the implementation of the law in practice. The Moroccan representative had stated that all the rights and freedoms enshrined in the Covenant had been incorporated into Moroccan domestic law; however, those rights and freedoms were clearly not fully implemented in practice. He hoped that the Moroccan delegation would explain why. Perhaps the police or local authorities did not always respect the law; what control did the judicial authority exert over their actions?

63. The National Charter of Human Rights listed a wide range of human rights violations, including torture, arbitrary arrest and enforced disappearances, particularly in rural areas. He hoped that the Moroccan delegation would explain frankly the reasons for the discrepancy between the law and the actual human rights situation, as well as the measures which the Government intended to take to ensure that the law was implemented.

64. Mr. ATMANI (Morocco), replying to members' questions, said that the Committee must remember that, at one time, Morocco had had at least six different judicial systems. It had not been easy to combine them into a coherent whole.

65. In reply to Mr. El-Shafei's question about the direct applicability of the Covenant, he could only say that the rights enshrined in the Covenant had been incorporated into domestic law and could thus be invoked before the courts. The Constitution was not a criminal code: its aim was to establish a legal system for the organization of the public authorities.

66. In respect of ill-treatment, deprivation of freedom and the right to a fair trial, the Moroccan Criminal Code and Code of Criminal Procedure guaranteed any person accused of a crime a fair trial in an ordinary court; there were no special courts in Morocco.

67. It was true that laws could be amended by decree in Morocco, as several members had noted. That provision reflected the fact that no system of law was ever perfect, and that improvements could always be made. However, the courts had no right to cancel laws altogether.

68. The human rights organizations, of which the first, the Moroccan League for the Defence of Human Rights (LMDH), had been founded in 1979, had been set up by private citizens and carried out their activities freely, without restriction by the Government. Their decisions were their own affair, and were not influenced by the Government; similarly, they had no influence on government decisions. They were entitled to apply for financial assistance, which was granted to organizations serving the public interest, on the same basis as any other political, economic or social organization.

69. The Royal Consultative Council was a purely advisory body serving the supreme administrative authorities of the country, including the King himself. It was made up of advisers to the King, Ministry of Justice officials, judges, and representatives of political parties, and was headed by a senior Supreme Court judge. Individuals were free to address their complaints to the Council, which then drew up a report for submission to the King. An enormous number of individual complaints had already been brought before the Council.

70. In reply to the questions about the place of the monarchy and Islam in Morocco, he remarked that every country had certain sacred principles which it had to preserve in order to protect its national identity and harmony. For Morocco, those principles were respect for Islam, for the monarchy and for the territorial integrity of the country. All political parties, both left-wing and right-wing, upheld those principles.

71. Mr. Aguilar Urbina had asked about Morocco's co-operation with other countries. Morocco's commitment to international co-operation had been shown by its ratification of the Covenant. He also wished to point out that it was not true to say that the Royal Consultative Council had no powers at all, since it did have the power to express an opinion on the issues submitted to it.

72. Individuals had the right to appeal against abuses by the police or public officials, and that right was widely publicized in the press, which also gave details of investigations and prosecutions by the courts or the Ministry of Justice. The Penal Code laid down more severe penalties for a police officer or a government official who committed certain offences.

73. All Moroccan citizens could make their wishes known by voting in elections and in referendums. Over 90 per cent of the population had voted in favour of the present Constitution in a referendum. In other words, the people had freely accepted those articles of the Constitution which outlined the powers of the King. In Islamic tradition, too, the King was not only the leader of the country, but also the supreme spiritual guide of all believers.

Under Islamic law, Muslims pledged allegiance to their leader in return for his protection and guidance in achieving political, economic and social progress. The position of the monarchy in Moroccan society was thus incontestable, and no attempt had ever been made to dispute it.

74. The compatibility of treaties signed by Morocco with the Constitution had been ascertained prior to ratification by various ministerial commissions. Morocco recognized the precedence of international law over domestic law. The courts had never ruled on the direct applicability of treaties, but lawyers often invoked treaty provisions before the judge. The Supreme Council of the Judiciary was empowered to take disciplinary action against judges who committed administrative or criminal offences, but did not intervene in judicial matters. Judges were appointed not arbitrarily, but on the recommendation of the Council. By virtue of article 2 of the Constitution, the equivalent of which was found in the Constitutions of many countries, the head of State was empowered to appoint senior military and civil officials.

75. The Moroccan Royal Academy held regular seminars, attended by both Moroccans and foreigners, to discuss the principle of self-determination and its implications in Morocco and internationally.

76. Replying to Ms. Chanet's question on the practical implementation of the Covenant, he said that the provisions enshrined therein were incorporated in Moroccan domestic law. Morocco had recently signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Its Code of Criminal Procedure was compatible with that Convention and provided for the punishment of the crime of torture. The right to life was respected: capital punishment, which derived directly from religious tradition, could be applied only to persons convicted of the most heinous crimes and was subject to a series of guarantees so that it had tended in practice to disappear in recent decades. Appeal against the death sentence was compulsory, and if the appeal was rejected, a subsequent request for pardon usually led to the commutation of the sentence to one of life imprisonment. Regarding the question on the monarchy and Islam, no political party in Morocco had ever sought their abolition.

77. In answer to Ms. Chanet's question on the Consultative Council for Human Rights, he said that the King had drawn parallels between the Council and its French counterpart. In establishing the Council, which had been set up at the same time as the administrative tribunals, the King had intended to provide citizens with additional remedies for the guarantee of human rights and to consolidate the rule of law in Morocco.

78. In answer to two other questions, he explained first that cases submitted to the Consultative Council, especially important cases, often received publicity owing to information having been leaked to the press, and secondly that the possibility of acceding to the Optional Protocol was currently under consideration.

79. In reply to Mrs. Higgins' question, he said that international organizations had a collaborative rather than a supervisory role in relation to the Moroccan judicial and legislative bodies. He acknowledged that the Moroccan Constitution had shortcomings, particularly in that it lacked provisions on various matters referred to in the Covenant, and those shortcomings would be brought to the Government's attention.

80. Equality before the law was guaranteed by the Constitution and incorporated in civil and criminal legislation. Trials in Morocco were conducted in a fair and equitable manner on the basis of the established laws and procedures, respecting the principle of non-retroactivity of laws.

81. The draft National Charter of Human Rights was merely an agreement between political parties concerning joint action, not an official document. It had been brought to the attention of the Government, but was binding only on the parties that had drafted it. The Charter would be taken into account by the authorities in so far as it was considered justified.

82. In reply to Mr. Wennergren's comments regarding discrepancies between judicial practice and legislative provisions in the area of human rights, he underscored the independence and irremovability of judges in his country and their keen awareness of their duties and responsibilities. Investigations carried out into alleged unlawful acts of the police and the administrative authorities had led in some cases to prosecution and conviction. Judges took their independence very seriously and considered respect for human rights an imperative part of their mandate. They had formed an association and in that context discussed judicial practice, published a bulletin and exchanged opinions. Regarding allegations of violence, he said that the first question asked of any accused brought before an examining magistrate was whether he had been the victim of ill-treatment. To his knowledge, there had never been a complaint of violence brought before a judge at the investigative stage, and allegations of ill-treatment brought before a criminal court were merely manoeuvres by the accused to avoid conviction.

83. The CHAIRMAN, thanking Mr. Atmani for his replies, welcomed the constructive dialogue that had been initiated with the help of the Moroccan delegation. The Committee's inquiries concerning Islam and the Constitution were aimed merely at determining the impact of the State religion on freedom of belief and it was common for the Committee to ask such questions. Regarding the issue of supervision by international bodies, the Committee did not stand in judgement as a court, but approached its work in terms of the obligations undertaken by States and of its mandate under the Covenant.

84. Mr. NDIAYE, pointing out that the interval between Morocco's previous report and its current report was too long, commended the delegation for its presence before the Committee and stressed the important role played by Morocco both internationally and regionally.

85. While the Moroccan Constitution cited Islam as the State religion, it also guaranteed freedom of thought, conscience and religion. As a frequent visitor to Morocco, he had the impression that the non-Muslim population was not oppressed on religious grounds and was free to practise its own beliefs. The Criminal Code, although it provided for capital punishment in conformity with Muslim beliefs, nevertheless seemed well-balanced. He would welcome confirmation on that score, particularly more detailed explanations as to how freedom of religion was exercised in practice and how it was incorporated into the Criminal Code.

86. Mr. BENHIMA (Morocco), supplementing Mr. Atmani's replies, explained that the Consultative Council had merely an advisory capacity and that it had no decision-making role. Its purpose was to assist the King in examining human rights issues. Its members included those appointed by the King, namely, the

Minister of Justice, the Minister for Foreign Affairs and Co-operation, the Minister of the Interior and, to ensure the balance referred to by Mr. Ndiaye, the Minister of Islamic Affairs, whose contribution should be seen in the light of the fact that human rights were laid down in the Koran and had always been part of Islamic practice. In addition, the Council included representatives of political parties, unions and human rights associations, members of the Bar Association, doctors and university professors, all of whom had been appointed on the recommendation of their peers.

87. Responding to Mr. Prado Vallejo's concern, he said the fact that the reports of the Consultative Council to the King on cases before it had reflected dissenting opinions among its members constituted proof of its independence. In the final instance, the decision on those cases rested with the King.

88. The National Charter of Human Rights was not yet an official document, but merely a draft text under nation-wide debate with a view to establishing future guidelines. The opposition political parties were free to hold seminars and various discussions on the subject.

The meeting rose at 12.55 p.m.

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Fortieth session

SUMMARY RECORD OF THE 1033rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 November 1990, at 3 p.m.

Chairman: Mr. LALLAH

later: Mr. DIMITRIJEVIC

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Morocco (CCPR/C/42/Add.10; M/CCPR/90/39/Rev.1) (continued)

1. The CHAIRMAN invited the delegation of Morocco to reply to the questions asked in section II, which read:

"II. Self-determination (article 1)

Please comment on the problems relating to self-determination in Western Sahara in the context of the obligations assumed by the Kingdom of Morocco under article 1, paragraph 3, of the Covenant."

2. Mr. BENHIMA (Morocco) reiterated the importance attached by Morocco to the right of peoples to self-determination, in the name of which Morocco had struggled for its liberation and had consistently expressed solidarity with and support for peoples, in particular African peoples, fighting for their sovereignty and freedom.

3. Morocco's presence in Western Sahara was in no sense a trusteeship or simply an administration, but was based on Morocco's right to complete its unification and achieve territorial integrity. It was also based on legality, as established by the International Court of Justice, which had recognized that Western Sahara was not terra nullius at the time of the Spanish occupation and that bonds of allegiance had always existed between the Saharan people and the Sultan of Morocco.

4. Since August 1988, the question of Western Sahara had continued to evolve as a result of the efforts of the Secretary-General of the United Nations. A peace plan had been submitted to the two parties and had been accepted in principle by Morocco. The practical arrangements for a permanent settlement of the question had still not been worked out and, on 18 June 1990, the Secretary-General had informed the two parties of those arrangements. On 31 July 1990, the King of Morocco had communicated to the Secretary-General his observations on the arrangements for implementation of the peace plan. The outline of a settlement was thus taking shape and it was for the Secretary-General, who was optimistic and confident of the outcome, to draw up a timetable, in consultation with the parties, for the proclamation of a cease-fire and the holding of a self-determination referendum. He understood that the Secretary-General, had already requested the United Nations High Commissioner for Refugees to be prepared for any eventuality in particular in connection with the repatriation of persons identified as Saharan nationals. Identification had always been a difficult question. The Secretary-General had set up a technical commission to determine who was or was not Saharan. The commission had almost finished its census and would shortly issue the list of all those who would be entitled to vote in the self-determination referendum.

5. Mr. NDIAYE noted that, during the consideration of Morocco's initial report (CCPR/C/10/Add.2), two members of the Committee had expressed disappointment at the absence of any reference to article 2 of the Covenant,

an omission which could at the time be explained by the fact that the opinion of the International Court of Justice had only just been delivered. However, as the matter had already been raised, the Committee might have expected it to be dealt with in the second periodic report (CCPR/C/42/Add.10).

6. There were various ways in which to implement the right to self-determination, and the information provided by the representative of Morocco regarding the forthcoming referendum was reassuring. Moreover, in Le Monde of 7 November 1990, the leader of Frente POLISARIO acknowledged that there were a number of points on which Frente POLISARIO and Morocco had reached agreement. Nevertheless, Western Sahara had been a theatre of war and the situation prevailing there was similar to a state of exception. In any country where a state of emergency was in effect, whether it was proclaimed or not, human rights and freedoms were suspended or made subject to restrictions. It would be helpful to have further details on that question and also to know whether there had been any displacement of population, what was the current demographic composition in the region and what was the situation of the indigenous populations after the "Green March". Those questions were important for more than one reason, particularly as far as articles 4 to 9, 14, 25 and 27 of the Covenant were concerned. He expressed the hope that, when the representative of Morocco addressed himself to those articles, he would refer to the state of exception in Western Sahara.

7. Mr. AGUILAR URBINA welcomed the progress towards peace and in particular the drawing up of a peace plan. The willingness of the King of Morocco to accept the result of a referendum was also commendable. In that connection, he recalled that during the 1970s a number of persons had been sentenced to life imprisonment precisely for having declared themselves to be in favour of a referendum. It would be interesting to know whether there were any plans to grant them amnesty.

8. In paragraph 5 of the report, it was stated that Morocco gave its constant support to liberation movements which were "genuine", an adjective which called for some comment; who determined whether such movements were genuine and on the basis of what criteria?

9. In his oral presentation, the representative of Morocco had referred to the work undertaken by the Moroccan Royal Academy on the content and scope of the principle of self-determination. It would be interesting to know the results of those studies.

10. Mr. ANDO expressed regret at the delay of the Moroccan Government in submitting its second periodic report and at the lack of information on the prevailing situation. It was to be hoped that any gaps would be filled in during the discussions.

11. He welcomed the steps taken to work out a peace plan. He wondered what was the legal status accorded to the population of Western Sahara pending the outcome of the referendum and whether any distinction was drawn between population groups opposed to joining Morocco and those in favour of it.

12. Reference had been made to the disappearance of a very large number of Saharans reported to have been arrested by the Moroccan security forces and of whom nothing had been heard since. He asked for further information on the matter and, in particular, on the measures taken.

13. Mrs. HIGGINS said that she had only a few observations to make. She had listened with interest to the explanations given by the representative of Morocco on the legal basis for Morocco's wish to reunify its territory and, in that connection, recalled the opinion of the International Court of Justice. The Court, while indeed recognizing that the people of Western Sahara had links with each of its current neighbours, had emphasized that no relationship of sovereignty existed either with Morocco or with any other country and had stated very explicitly that the population of the territory should determine its own future by freely expressing its will. The referendum to be held had certainly been a long time in coming. In that referendum, it was of the utmost importance to ask the right questions.

14. Other members of the Committee had referred to the state of exception which might exist in Western Sahara and give rise, as provided in article 4 of the Covenant, to derogations from the obligations concerning certain rights. In her view, however, article 4 did not apply in that it referred to a situation of exceptional danger which threatened the life of the nation, and Western Sahara was not as yet part of the Moroccan nation. Thus far, however, Morocco had actually exercised complete control over some areas of the territory, and the Committee was anxious to learn what impact that control had had on the life of the populations concerned.

15. Mr. BENHIMA (Morocco) said that the reason why the decolonization of Western Sahara might seem overdue to some was because Morocco itself had taken a long time to regain its independence and sovereignty. The Committee would recall that, at the Berlin Conference in 1885, when Europe had set about carving up the African continent, covetous eyes had been cast on Morocco because of its riches and its strategic position. Morocco's decolonization had been very gradual, beginning in 1956 with the agreement concluded with France recognizing Moroccan independence within a framework of voluntary interdependence. That same year, Morocco had succeeded in having the international status of Tangier abolished and had concluded with Spain an agreement recognizing its sovereignty over the northern zone; in 1957, Morocco had recovered Tangier and, in 1958, the southern Province of Tarfaya. It had had to wait until 1969 to recover the enclave of Ifni and, finally, until 1975 for Spain, under the Madrid Agreement, to return Saharan territory. That agreement, duly deposited with the United Nations Secretariat, stipulated that the restoration would not be final until the population had freely expressed its will through the Jamâa, the Council of Notables. As the Saharans were a nomadic population, the Notables were the tribal chiefs. It was interesting, moreover, that the technical commission set up by the Secretary-General had recently called on the tribal chiefs to help it in its task of identification. Accordingly, the Jamâa had met from February 1976 onwards, in the presence of the Spanish authorities which were still responsible for their administration and which, after duly determining that the Jamâa had expressed itself freely, had then returned the Saharan territory to the Kingdom of Morocco.

16. That review of events showed that the Saharan population was treated no differently from the rest of the Moroccan population, since the Saharans formed an integral part of the Moroccan people. Since 1976, the Kingdom had not proclaimed a state of exception, even though the prevailing situation was tantamount to a state of war. The conflict had had no harmful effect on the economy or on the free movement of individuals. In fact, the Saharan population had received special attention, since Spanish colonization had done nothing specific to develop the area. That neglect had produced an imbalance

with the developed north, an imbalance which had called for the setting up of a large number of special programmes, particularly in the health and education fields. Even Morocco's detractors recognized the results of those efforts. The Kingdom of Morocco had set up a constitutional council to deal exclusively with Saharan affairs. Domestic banks had been requested to accord facilities for job creation in the area and tax exemptions were granted. The Saharans elected their own municipal councils and held positions of responsibility in the civil service. Consequently, they had all the rights and obligations provided for in the Constitution and laws for the population as a whole.

17. With regard to demographic composition, there was no imbalance. Morocco was a completely open country, there was free movement from north to south and Moroccans settling in Saharan territory did so not at all as colonizers, but to ensure a symbiosis between the two parts of the Kingdom which had been separated during the colonial period. The road of unity, which linked the former French Morocco to the former Spanish Morocco had been built to give that symbiosis a concrete form. No measure had ever been taken to change the demographic composition of the region and, while the overwhelming majority of the population of Western Sahara was Saharan, some Saharans settled in the north, which was a perfectly normal and common practice in all countries.

18. Replying to Mr. Aguilar Urbina's question concerning the persons said to have been sentenced to life imprisonment for claiming the right to self-determination, he said that that information was inaccurate. Individuals had indeed been sentenced, but for having rejected the idea that Western Sahara formed part of Moroccan territory. The position of the Moroccan authorities continued to be that any Moroccan national declaring that Western Sahara was not part of Morocco must accept responsibility for such a statement.

19. With regard to the possibility of an amnesty being granted to the persons convicted in connection with the affair referred to by Mr. Aguilar Urbina, he said that the King of Morocco, who was the spiritual leader of the faithful and the depositary of the teachings of the Prophet, from whom he was also descended, was a sovereign imbued with humanity. The Constitution of Morocco, combined with a tradition of royal clemency which went back 14 centuries and was inspired by Islam, meant that it was not impossible that the King might exercise his right of pardon, in application of his repeatedly stated position that the nation was clement and merciful.

20. Replying to another of Mr. Aguilar Urbina's questions, concerning the Moroccan Royal Academy, he said that the Academy was a legally constituted Moroccan institution which carried out its activities under the protection of the King, but in a spirit of openness to the rest of the world. At the time of its establishment, the King had decided that it would consist of 20 Moroccan members and 20 foreign members from all walks of life. It served as a forum for reflection and discussion of major contemporary issues. The Academy's study on the principle of self-determination was not focused specifically on the territory of Western Sahara, but was much more general in scope.

21. Replying to Mr. Ando's question regarding the legal status of the Saharan population, he said that, until such time as the referendum had made that population's feelings clear once and for all, it enjoyed the same rights and duties as the rest of the Moroccan population.

22. Turning to the question of disappearances, he said that some non-governmental organizations unfortunately departed from their specifically moral mandate and failed to demonstrate the proper intellectual integrity. Moreover, their information was sometimes tainted with bad faith. Nevertheless, an inquiry was being conducted into the matter which, while admittedly disturbing, did not seem to be based on a credible and meticulous study, and the authorities were optimistic that, when the inquiry was completed, they would be able to provide all the necessary clarifications to the Working Group on Enforced or Involuntary Disappearances, which had brought the matter to their attention.

23. Replying to the comments made by Mrs. Higgins regarding the free will of the Saharan people, he stressed that people were convinced that the peace process initiated by the Secretary-General of the United Nations would quickly lead to the genuine expression of the freedom of the Saharan people.

24. Ms. CHANET noted that the Moroccan delegation had stated that the Saharan population did not enjoy any special status and that the people of Saharan origin were not treated any differently from the rest of the Moroccan population. She wished to know, therefore, whether Saharans had exactly the same identity documents as other Moroccans.

25. Mr. FODOR and Mr. MYULLERSON, referring to the reply given to Mr. Aguilar Urbina's question regarding the case of the persons allegedly imprisoned, not for having called for a referendum, but for having said that Western Sahara was not part of Morocco, said they would like some clarification on that point. In view of the provisions of article 19 of the Covenant, they would like to know in particular what type of responsibility should be assumed by an individual expressing an opinion different from that of the authorities.

26. Mr. NDIAYE said that, in his earlier statement, he had not been referring to discrimination against Saharans. In alluding to a state of exception, he had been thinking of article 4 of the Covenant which stated "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law ...". It was known that, in a war situation, a country was often subjected to a state of emergency, or even a state of siege, which entailed a number of derogations, some of which were authorized under the Covenant, while others were not. He did not entirely agree with Mrs. Higgins regarding the applicability of article 4 of the Covenant to a territory such as Western Sahara, to the extent that that territory was part of Morocco. The Organization of African Unity (OAU) had in fact found in favour of the Moroccan authorities on that question. Even the Frente POLISARIO seemed to agree to the Moroccan administration remaining on Saharan territory, the only apparent bone of contention being the size of the staff of that administration.

27. Mr. AGUILAR URBINA associated himself with the questions asked by Mr. Fodor and Mr. Myullerson concerning the type of responsibility to be assumed by an individual expressing an opinion different from the official position on the question of Western Sahara. It was difficult to see how such a provision could be consistent with article 19 of the Covenant.

28. Mr. BENHIMA (Morocco), replying to the question asked by Ms. Chanet, said that the Sarahan population's identity documents were absolutely identical to those of other Moroccans. On both sides of the artificial frontier which had divided Morocco for several decades, there were the same tribes, the same families and the same bonds which had never been broken. Furthermore, Islam prohibited any form of discrimination.

29. Replying to the questions asked by Mr. Fodor, Mr. Myullerson and Mr. Aguilar Urbina, he said that there were many remedies available to Moroccan nationals against abuses by the administrative authorities and by the State itself. In Morocco, it was possible not to agree with the Government, and the authorities even encouraged dissent through the proper legal channels (i.e. the political parties, Parliament, the trade unions, a number of associations, and so on). There were only three major principles which were not open to challenge of any kind: the monarchic system, the fact that Islam was the State religion and territorial integrity. All other decisions or views could be contested, on the understanding that such opposition remained within the bounds of legality; if an individual deliberately exceeded those limits, he placed himself beyond the pale of his own society and must assume responsibility for his declarations or gestures.

30. Mr. Dimitrijevic took the Chair.

31. The CHAIRMAN invited the delegation of Morocco to reply to the questions asked in section III, which read:

> "III. State of emergency (article 4)
>
> What legal provisions exist, in addition to article 35 of the Constitution, in respect of the introduction and administration of a state of emergency? Please comment on the compatibility of such provisions, as well as of article 35 of the Constitution itself, with article 4, paragraph 2, of the Covenant."

32. Mr. ATMANI (Morocco) said that Morocco had no legal provisions governing states of exception as a whole. In fact, after serious, widespread or bloody incidents, the administrative authorities were not authorized to take provisional measures restricting individual freedoms. Civil powers could not be transferred to the military authorities and no special courts could be set up. Nor was there any restriction of the freedom of movement of persons and goods. At most, the authorities could invoke article 35 of the Constitution, which provided that "when the integrity of the national territory is threatened or events occur which are likely to imperil the functioning of constitutional institutions, the King may, after consulting the President of the Chamber of Representatives and addressing a message to the nation, issue a dahir proclaiming a state of exception. In so doing, he is empowered, all contrary provisions notwithstanding, to take the measures necessary to defend territorial integrity, restore the operation of constitutional institutions and conduct the affairs of the State. The state of exception shall be terminated in the same way as it was proclaimed".

33. Article 35 covered all cases calling for firm or corrective measures for the safeguarding of territorial integrity or the peace and security of the population. It should be clearly understood, however, that the state of exception did not affect the independence of the judiciary and did not empower

the administrative authorities to restrict the freedom of individuals by such measures as administrative detention, restricted residence or even local expulsion. During the period of exception, institutions functioned normally and criminal prosecutions were conducted in accordance with the Code of Criminal Procedure. However, since the entry into force of the Covenant, no internal conflict calling for the imposition of a state of emergency or state of siege had arisen in Morocco.

34. Mr. AGUILAR URBINA said that he always felt very perplexed in considering the question of states of exception, coming as he did from a country which had no legal provision in that regard, and did not even have an army. Whenever a state of emergency was proclaimed it was through an emergency commission of the Ministry of Public Works and Transport, since it was a measure adopted in the event of earthquakes or floods.

35. That consideration aside, he noted that the chapter of the report dealing with the question of states of exception was very concise. Moreover, article 4 of the Covenant was restrictive and provided for such measures in the event of a public emergency which threatened the life of the nation. The Moroccan Constitution provided for two states of exception - the state of emergency (article 35) and the state of siege (article 48). Those two provisions were clearly broader in scope than article 4 of the Covenant. Under article 35 of the Constitution, the King could take any measures he deemed necessary, without restriction, and could, in particular, ignore rights for which no derogation was possible, which seemed to conflict with the provisions of article 4, paragraph 2, of the Covenant.

36. It was still more disturbing that, under article 35 of the former Moroccan Constitution, the state of emergency had been proclaimed in Morocco in 1965 and had not been lifted until five years later. He would therefore be grateful if the Moroccan delegation could clarify a number of points. Firstly, with regard to article 48 of the Constitution under which "the state of siege may be declared, by dahir, for a period of 30 days" and "the 30-day period may be extended only by an act of law", he would like to know whether the King could suspend the Chamber of Representatives or whether the act in question was promulgated by the sovereign in accordance with the provisions of article 26 of the Constitution. Could Parliament suspend the royal decree proclaiming the state of siege, even during the first 30 days? What means were available to Moroccan citizens to contest that right? What was the authority empowered to request the extension of the state of siege. Was it the King himself, or did the sovereign submit a request to that effect to the Chamber of Representatives? And if the Chamber of Representatives was competent to enact such a law, in view of article 48 of the Constitution, could it refuse to extend the state of siege? Must the act of extension set a maximum duration or could the state of siege be extended indefinitely? Under what circumstances could the state of siege be proclaimed?

37. With regard to article 35 of the Constitution, he seemed to recall that, when the King had proclaimed the state of emergency on 8 June 1965, he had dissolved Parliament by the same decree and had then assumed both legislative and executive powers. Would such a situation be possible under the current Constitution? If so, must the King justify his decision to proclaim a state of emergency to any organ of the Moroccan State? Was there any way in which the judiciary or legislature could counterbalance the King's decision and could it have the measure repealed? Moreover, were there any provisions other

than in the Constitution governing the duration of the state of emergency and, in order to proclaim such a measure, must the King have the consent of the other authorities, particularly regarding an extension?

38. He also noted that the King could proclaim a state of emergency "after consulting the President of the Chamber of Representatives". Did the view of the President reflect a decision by the Chamber of Representatives as a whole or was it simply his personal opinion? Must that opinion be taken into account by the King or did it simply represent a sort of notification of the legislature through the President of the Chamber of Representatives?

39. The Moroccan authorities had stated in the past that the ratification of the Covenant had not required the holding of a referendum. Could that be interpreted as meaning that the King who, under article 35 of the Constitution, was "empowered, all contrary provisions notwithstanding, to take the measures necessary to defend territorial integrity, restore the operation of constitutional institutions and conduct the affairs of the State", was obligated to take account of the provisions of article 4 of the Covenant? What means existed in Morocco for assertion under any circumstances, of the rights which, under the Covenant, could not be suspended?

40. Finally, with regard to the events in Marrakesh in 1981, a number of questions put to the Moroccan delegation at the time of the consideration of the first periodic report still remained unanswered, particularly regarding the number of deaths and arrests and the nature of the trials which were held. Furthermore, on 8 January 1984, similar protests had been staged in other Moroccan towns. He would therefore be grateful if the Moroccan delegation could provide the Committee with information on both the events of 1981 and those of 1984 and, in particular, if it could answer the questions which had been asked by the Committee nine years earlier.

41. Mr. POCAR shared the concerns expressed by members of the Committee regarding the state of emergency. He had doubts in particular regarding the content of article 35 of the Constitution which provided that, in a state of exception, the King was empowered to take the measures necessary for the defence of the nation "all contrary provisions notwithstanding". The provisions which would thus be swept aside appeared to include those of the Covenant, which would suggest an incompatibility between the Covenant and the Moroccan Constitution. However, the Covenant had been incorporated into the Moroccan legal order without even the need for a referendum, which meant that its provisions did not conflict with those of the Constitution. He would welcome some clarification on that point. In the same context, he drew attention to article 29 of the Constitution and asked whether a state of emergency would be proclaimed by the King through decrees which were not even countersigned by the Prime Minister and, if so, whether the King could assume absolute powers.

42. Mr. Lallah resumed the Chair.

43. Mr. ATMANI (Morocco) said that matters relating to the state of emergency or state of siege were not the subject of special laws in Morocco, but that any conflicts which might arise were dealt with directly by the King under article 35 of the Constitution. During the events which had taken place in Marrakesh in 1981 and the disturbances which had occurred in Casablanca in 1984 as a result of economic constraints required by the International Monetary Fund (IMF), the King, despite the gravity of the situation, had not deemed it

necessary to decree a state of exception since it was felt that the disturbances were temporary and could be dealt with under ordinary legislation. When article 35 of the Constitution had been applied on those two occasions, the judicial institutions had continued to function normally, no special powers had been given to the military authorities, no special court had been set up and individual freedoms had in no way been restricted. When those two states of exception had been lifted, a number of laws had been adopted by decree and it was under those laws that an independent and free system of justice currently operated in Morocco.

44. A state of siege was proclaimed with the consent of the Legislative Assembly. Initially, it could not last longer than 30 days and, if circumstances and the situation in the country so required, it could then be extended only by an act of Parliament. During the emergency period, all rights recognized in the Covenant continued to be observed. The powers exercised freely by the King in the national interest were not usurped powers but derived from the application of the Constitution as approved by the population in a fully democratic referendum.

45. The CHAIRMAN invited the Moroccan delegation to answer the questions contained in section IV of the list, which read as follows:

"IV. Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26)

(a) With reference to paragraph 21 of the report, please clarify whether an alien husband of a Moroccan woman is eligible for Moroccan citizenship on the same basis as a foreign woman married to a Moroccan husband.

(b) Please clarify the basis for the different treatment under Moroccan law of men and women in respect of their capacity to transmit Moroccan nationality automatically to children born outside the country (see paragraph 22 of the report).

(c) Please provide information on the distinction between men and women regarding inheritance laws.

(d) Treatment of aliens. In which respect are the rights of aliens restricted as compared with those of citizens?"

46. Mr. ATMANI (Morocco), referring to question (a), said that the spouse of a Moroccan citizen did not automatically acquire Moroccan nationality. That regulation enabled aliens to apply freely for naturalization and enabled the Moroccan authorities to submit the naturalization application to a special commission which determined whether the alien fulfilled the conditions for the acquisition of Moroccan nationality. The situation was more favourable for foreign wives than for foreign husbands in that a foreign woman marrying a Moroccan could, after two years of marriage, acquire Moroccan nationality simply by an order of the Minister of Justice, whereas foreign husbands must have been married for five years and obtain Moroccan nationality by decree.

47. Referring to paragraph (b), he said that Moroccan nationality was in principle acquired at birth when the father was Moroccan, in accordance with the rule of jus sanguinis. However, any child born of a Moroccan woman and an unknown father was Moroccan, even if the child was born outside the country. Any child born of a Moroccan mother and a stateless father was also Moroccan, as was a child born of unknown parents in Morocco. Thus, any child born in Morocco automatically acquired nationality, in accordance with the Convention on the Rights of the Child.

48. The question referred to in paragraph (c) was rather complex, since there were three different systems in Morocco: Islamic law, which applied to citizens of the Muslim religion, Hebraic law, which applied to citizens of the Jewish faith, and the international system, which applied to aliens. However, inheritance laws in Morocco were based directly on the principles of the Koran. Consequently, women were in a somewhat less favourable position in respect of inheritance. On the other hand, however, they did not contribute at all to household expenditures and were free to manage their own property without being accountable to their husbands.

49. Finally, with regard to the treatment of aliens, in accordance with a decree of 12 August 1913, their respective national laws were applied. As far as political matters were concerned, aliens could neither participate in local or general elections nor be elected to local, municipal, communal or provincial assemblies, nor sit in the Chamber of Representatives. If their national laws so permitted, they could fulfil their civic duties through their consulates or embassies.

50. Ms. CHANET began by noting that, in paragraph 13 of the report, it was stated that "as soon as they come of age both married and unmarried women enjoy the same rights as men in respect of legal capacity" and, in paragraph 33, that "more and more women in Morocco have become members of political and trade union organizations". She wondered, therefore, under what conditions women could join trade unions and whether a distinction was made in that respect between married and unmarried women. Secondly, referring to paragraph 16 of the report, she asked whether a woman could obtain a passport without the authorization of her husband, if she was married, or of her father, if she was unmarried. Thirdly, she wished to know how many women held seats in Parliament and had access to the civil service, higher education and the liberal professions. Finally, she asked whether, in Morocco, the principle of "equal pay for equal work" was applied in both the public and private sectors.

51. Mr. ANDO associated himself with Ms. Chanet's last question and asked whether the Moroccan Government took measures to correct any disparities in pay. He also asked why Morocco had not ratified the Convention on the Elimination of All Forms of Discrimination against Women.

52. According to paragraph 10 of the report, the right of association of aliens was strictly regulated. He would like to know whether different conditions were imposed depending on the type of association, for example, in the case of foreign banks which wished to establish a branch, commercial or industrial enterprises, educational associations or even social or humanitarian aid associations. He also asked whether those conditions differed from those to be met by nationals.

53. Mr. AGUILAR URBINA noted that the report, while not short of examples illustrating the equality of men and women before the law, gave no indication as to the difficulties which arose in practice, i.e. in daily life, in ensuring observance of the law. In paragraph 14, for example, it was stated that "the Code of Civil Procedure and the Code of Criminal Procedure make no distinction between men and women"; however, paragraph 20 appeared to suggest that in the event of dissolution of a marriage, the father was rather unfavourably treated with regard to custody of the children, despite the fact that "the first male relative who may be given custody" was actually the father and not a maternal relative. Moreover, with regard to paragraph 17 of the report, he wondered whether men and women had exactly the same rights with regard to marriage, since that institution was governed by the requirements of the Muslim religion, so that men might have more rights than women; he was thinking in particular of polygamy. The report also failed to state whether, in accordance with Islamic law, the right to divorce was enjoyed solely by men or whether Moroccan women could also exercise it and how it applied to non-Muslims. Paragraph 19 gave two examples of cases in which the husband could impose his will on his wife, although the Moroccan delegation could probably give details of other cases, such as choice of domicile. He was also unsure what was meant by the expression ipso facto in paragraph 21 and of the objective reasons for prohibiting women from doing certain types of work, as stated in paragraph 23. In addition, as Morocco was a developing country where, in general, a single wage was not enough to provide for household needs, it would be interesting to know whether women had equal access to employment and what was the status of widows and unmarried mothers. He also wondered whether men also were entitled to the benefits granted to working women as described in paragraph 25, what criteria were used in fixing the minimum wage and whether, as in most countries, women were paid less than men for doing the same work. Paragraph 33 appeared to indicate that women were represented only in the communal and provincial assemblies and were not eligible, for example, for parliamentary office. He asked what was the percentage of women holding key positions in the civil service and judiciary. Finally, he wondered whether it was conceivable that article 20 of the Constitution might one day be amended so that women too could accede to the Crown.

54. Mr. NDIAYE said that, since the system of inheritance was based on the Koran, he would like to know whether a marriage between a Muslim woman and a Catholic or Jewish man was valid under Moroccan law and, if so, which inheritance laws applied. He also asked whether there were secular laws of inheritance applicable to non-believers. Furthermore, he did not believe that inequality between men and women with regard to inheritance was justified by any religious precept.

55. Mr. FODOR said that, since the questions he had intended to ask had already been put by Mr. Aguilar Urbina, he would confine himself to one observation on paragraph 20 of the report. Under article 99 of the Code of Personal Status, the first man who could be awarded custody of the children of a marriage was preceded by a number of women. Even if, in the interpretation given to that provision, the father was the first male relative to whom custody could be awarded, the provision was not compatible with article 23, paragraph 4, of the Covenant, although the question of custody was not linked to the dissolution of the marriage.

56. Mr. EL SHAFEI said that he knew that Moroccan women had access to many professions and positions and that the Constitution and the law enabled them to have access to training and education, so that they could have career opportunities and participate in public affairs. However, the Dahir of 24 February 1958, although it stated that "all Moroccans are entitled to enter the public service on equal conditions", accompanied that statement with a number of restrictions applicable to women. He asked therefore whether that Dahir was still in effect, whether those restrictions were based on sex or some other criterion and whether women were eligible for administrative or governmental positions of responsibility.

57. Mr. WENNERGREN noted that, in paragraph 31 of the report, it was stated that women enjoyed the same rights as men to vote in all elections. He asked what were the conditions to be fulfilled by women in order to stand for election and whether men also had to have acquired a minimum age of 25 years for that purpose. It would also appear that, in practice, women were unable to become members of Parliament. He would like to know whether that was correct. Finally, he asked whether women could hold positions of responsibility in the public service, in ministries or diplomatic missions, and whether they could become ambassadors, prime minister or ministers of the Government.

58. The CHAIRMAN asked the representative of Morocco, in replying to the questions on the laws of inheritance, divorce and marriage in general, to take account also of the provisions of article 23, paragraph 4, of the Covenant, which was not included in the list of issues but which Mr. Fodor had quite rightly mentioned.

59. Mr. ATMANI (Morocco), replying to the questions asked by Ms. Chanet, said that trade unions were constituted in accordance with the Dahir of 15 November 1958, whereby any Moroccan could join any party or trade-union organization of his choice. Moroccan women, whether married or not, could join a trade union; there were many trade-union members among women teachers and health workers. In Morocco, women could travel freely. Unmarried women who had reached the age of majority or had been emancipated by a first marriage also had the right to choose their domicile. In the case of married women, it was the husband who chose the conjugal domicile. With regard to passports, the issue of that document for foreign travel was based on the assumption that the holder had the necessary means to undertake such travel. In fact, the authorities of foreign countries currently required, in addition to the passport, evidence of means and also, in many cases, the name and address of the person receiving the traveller. Consequently, in the case of married women, the husband must authorize the passport application and the travel; he must also assume the cost of the travel, of the period spent abroad and of the return to Morocco. If the woman was a minor, it was the father who must give the authorization and assume the costs.

60. Women could participate freely in public affairs. Equality between men and women applied to the right to participate in elections either as a voter or as a candidate. There were currently women members of communal and provincial assemblies and the reason that there were none in Parliament was that none had been elected, although a number had stood. They were to be found, however, in public administration, the universities and local authorities. Indeed, in some administrations, such as national education,

health, social affairs and justice, they were very numerous (paras. 27-31 of the report) and held posts at all levels. With regard to employment, the 1973 Act on the employment of women and minors stipulated that women must receive the same pay as men for the same work. However, the phenomenon of "black" labour existed in Morocco as in all countries, and women with working husbands often agreed to work for lower pay than men, in the knowledge that what they earned was supplementary and that, under the law, they were not obliged to contribute to family maintenance.

61. Replying to Mr. Ando, he said that women working in the public or the private sector enjoyed special advantages linked with their female status (para. 24 of the report). There was no discrimination against women in Morocco. The rules applied to women derived from the legislation known as Mudawwana which was based on the precepts of the Koran. The Moroccan people could be considered as wholly Muslim since Jews, who represented the principal minority, numbered only 20,000. The Moroccan people were Sunnis and there was no dissident or extremist sect in Morocco.

62. With regard to the status of foreign associations, banks and companies, he said that the regulations governing personal and inheritance status did not apply to civil or commercial law and that foreign associations, banks and companies in Morocco enjoyed the same rights and privileges as Moroccan associations, banks and companies.

63. Replying to Mr. Aguilar Urbina's question on the difficulties which current legislation might create in political matters, he said that, in Morocco, the Civil Code was divided into two parts. The first was the Code of Obligations and Contracts which applied to all the Moroccan population, including Muslims, Jews and aliens. By alien, he meant any person not belonging to the two main groups which had always comprised the Moroccan population, namely, Muslims and Jews. Like the Muslims, the Jews were full Moroccan citizens, distinguished only by their personal status and the inheritance laws. In order to deal with any problems which might arise as a result of that distinction, the Ministry of Justice employed a counsellor to advise on matters of personal status and inheritance rights concerning Jews. The second part of the Civil Code consisted of the Mudawwana, for Muslims, and the traditional rules known to Moroccan rabbis, for the Jewish community.

64. Under Muslim law, the right of custody was reserved basically for women, by virtue of the natural bond between mother and child. Fathers had no clearly determined rank in the hierarchy of those to whom custody could be awarded. He noted that preference was accorded to the mother in that regard in the laws of such countries as France, Belgium and Germany. The Code of Personal and Inheritance Status was based directly on Koranic precepts. Moreover, the last article of the Mudawwana stipulated that, for all matters not dealt with in the Code, reference should be made to Islamic law.

65. With regard to the rights of spouses, he said that, during marriage, parental authority was exercised by the father. If the marriage was dissolved, that authority was exercised by the mother, as having custody of the children. If a court awarded custody to the father on the grounds of known misconduct by the mother, it was the father who exercised parental authority. Finally, while repudiation was a procedure which could be invoked only by the husband, divorce was a female prerogative. The husband could not institute divorce proceedings.

66. With regard to marriage to an alien, article 1 of the 1958 Code on Nationality stipulated that aliens who became Moroccan citizens could not have more than one wife. In general, polygamy had fallen into disuse, because economic conditions made it difficult, and also because of changes in the status of women themselves. In addition, article 144 of the Mudawwana accorded women the right to impose monogamy on their husbands at the time of the marriage. That requirement, which could be included in the marriage contract at the request of the wife, could be invoked as grounds for divorce if the contract was not respected in that regard. Any husband wishing to take a second wife must inform her that he already had one wife; he was also obliged to so inform the civil authorities. Finally, Moroccan women who married aliens remained Moroccan, even if they acquired the husband's nationality, as Morocco applied the principle of perpetual allegiance in that respect.

67. In Morocco, women kept their given and family names in accordance with tradition and Islamic law. They never took the name of their husbands, even if in practice it was sometimes used to refer to them. Relationship was defined by direct legitimate descent, which established the ties between father and child and the rights of inheritance and determined the transmission of the family name. Under Islamic law, illegitimate descent in respect of the father was not recognized. It was recognized only in respect of the mother, by virtue of the natural link between her and the child. The Mudawwana was very clear in that respect. A natural child took the mother's name, inherited from her and was included in her civil status record. That was one case in which women could obtain a civil status book in their own name.

68. The employment of women was governed by the Dahir of 1973 which concerned both the physical and moral integrity of women and introduced special measures regulating the employment of women in certain types of work and enterprise. Moroccan women had formed associations which met to consider their problems and discuss their political and social status. They had never, however, requested the abolition of the Koranic rules applicable to them with regard to personal and inheritance status. The participation of women in public affairs was governed by the Dahir of 1958 concerning the public service, which established the equality of men and women in that respect.

69. Replying to Mr. Aguilar Urbina's question on royal succession, he said that the exclusion of women from succession to the throne was not limited to Morocco and was, or had been, practised in other countries such as France, before the Republic. It was a constitutional matter and it was the Constitution that would have to be amended in order to change that practice. It should be noted that women in the Moroccan royal family had never pretended to the throne.

70. Replying to Mr. Ndiaye, he said that, under Moroccan positive law, a Muslim Moroccan woman could marry a Jew or Christian only if he converted to Islam. A Moroccan Muslim man, on the other hand, could marry a Jew or a Christian woman without her changing religion. Consequently, the union of a Moroccan Muslim woman with a Jewish or Christian man was not valid under Moroccan law. Moreover, the Mudawwana stipulated that there could be no right of inheritance between Muslims and non-believers. Indeed, such a succession would be impossible since the applicable rules were different for Muslims, Jews and Christians. That was why, in its consulates and embassies abroad, Morocco issued a note informing alien women wishing to marry Moroccans of the inheritance problems which could arise if they did not convert.

71. Concerning the question asked by Mr. El Shafei on the Dahir of 1958, he admitted that there were some functions which could not be performed by women. They could not, for example, serve in the police force or in the auxiliary forces and could not act as a representative of authority (caïd, pasha, governor); on the other hand, they could enlist in the army and there were many women in the army social services. They were not liable for military service, but, like men, they were obligated to do two years of civil service.

72. He thought that he had already answered Mr. Wennergren's question on the equality of men and women and on non-discrimination against women with regard to participation in elections. Nevertheless, he reaffirmed that such equality was embodied in the law, and that, if it was not observed more widely in practice, it was because attitudes changed slowly and thus far the electorate had been more inclined to vote for men. Finally, women already represented Morocco as ambassadors and selection for ministerial posts was the responsibility of the Prime Minister.

73. The CHAIRMAN said that the representative of Morocco had given very clear explanations of the laws in force in Morocco which established a number of distinctions between men and women. However, the Committee would have liked him to analyse those laws in the light of the articles of the Covenant on which questions had been asked. It was to be hoped that he would be able to do so for that part of the report which remained to be considered.

The meeting rose at 6.10 p.m.

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Fortieth session

SUMMARY RECORD OF THE 1034th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 8 November 1990, at 10 a.m.

Chairman: Mr. LALLAH

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Morocco (continued)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Morocco (CCPR/C/42/Add.10) (continued)

1. The CHAIRMAN drew attention to the list of issues to be taken up in connection with the consideration of the second periodic report of Morocco (CCPR/C/42/Add.10) and invited the Moroccan delegation to continue its replies, beginning with section V.

V. Right to life (article 6)

"(a) Is any consideration being given to the abolition of the death penalty? What is Morocco's position regarding the Committee's general comment No. 6 (16), particularly paragraphs 6 and 7 thereof?

(b) (i) What are the rules and regulations governing the use of firearms by the police and security forces? (ii) Have there been any violations of these rules and regulations? (iii) Does an independent and impartial machinery exist effectively to investigate such violations? (iv) What disciplinary and other measures have been taken against those found guilty?

(c) Please provide information on measures aimed at reducing the rate of infant mortality."

2. Mr. BENHIMA (Morocco), responding to question (a), said that the death penalty was applied in Morocco to punish only the most odious and abhorrent crimes, for which the courts found no mitigating circumstances. It was based on the lex talionis, which had a religious origin. Its abolition was not under consideration, but its application was subject to fundamental guarantees: it could not be carried out before it had been appealed against by the accused or the Prosecutor-General and, if the appeal was rejected, a request for pardon was always submitted. In practice, the death penalty was usually suspended or commuted to life imprisonment. There had been no executions in Morocco in the past decade.

3. Regarding question (b), there were regulations governing the use of firearms by the royal armed forces, the police and the auxiliary forces. Anyone violating those regulations was subject to disciplinary action, which could involve demotion or dismissal, or to criminal prosecution. A commission of inquiry could be set up by the Government in the event of serious professional misconduct.

4. In reply to question (c), he said that educational and vaccination campaigns for mothers and children were being carried out in co-operation with WHO and UNICEF.

5. Mr. POCAR, pointing out that paragraph 39 of Morocco's second periodic report provided only an incomplete list of crimes that carried the death penalty, said that the Committee required a full list of those crimes in order to determine whether Moroccan legislation governing that penalty was in conformity with article 6 of the Covenant.

6. Article 201 of the Criminal Code had been discussed during the Committee's consideration of Morocco's initial report. At that time, Committee members had asked what was meant in that article by "offences against State security", but that question had not been answered. He inquired whether that article was still in force, how many persons had been sentenced to death under it, and whether violations thereof were considered as ordinary crimes or political crimes. Although no executions had been carried out in the past decade, death sentences had nevertheless been handed down. In that connection, he asked how many detainees were currently under sentence of execution and what had been the nature of their crimes. According to some sources, Moroccan prisons contained between 15 and 20 persons who had been condemned to death for political offences and between 100 and 150 persons who had been given the death penalty for ordinary crimes. He would welcome further details on that score.

7. Referring to sub-item (i) in paragraph 39 of the report, he asked what was meant by "crimes against the well-being of the Nation" and how many persons had been sentenced under the Dahir whereby that crime had been established. In that connection, he stressed the obligation of the State to protect life, especially the lives of detained persons. According to various sources, deaths during detention or police custody were frequent. Detainees had also allegedly been driven to commit suicide by mental or physical ill-treatment. He inquired what measures were taken by the authorities to investigate such cases and to punish the culprits.

8. Mr. AGUILAR URBINA, pointing out that the Covenant did not prohibit the death penalty but restricted its application to only the most serious crimes, associated himself with Mr. Pocar's observation that the list in paragraph 39 of the report setting forth the crimes punishable by death was non-exhaustive and said that it should be supplemented. He was also concerned about the fact that the crimes concerned were not precisely defined. That was all the more serious as the Moroccan Constitution did not expressly protect the right to life. It was not clear what was meant by "crimes against the well-being of the Nation". The wording used to describe the crimes carrying the death penalty did not correspond to the usual definitions. Moreover, it was quite surprising that a crime had been established merely by decree. He would welcome more specific information in that respect, particularly concerning how many persons had been condemned to death under the Dahir of 29 October 1959 and under article 201 of the Criminal Code, what crimes those persons had been convicted of and how often the death penalty had actually been carried out in those cases.

9. Taking into account the fact that the death penalty was rarely passed and virtually never carried out, he wondered whether any consideration was being given to reducing the number of crimes carrying that penalty or to abolishing it altogether.

10. Turning to paragraph 41 of the report, he asked for clarification as to the specific provisions of the Dahir of 6 February 1958 establishing that the right of pardon was a prerogative of the King. Did the King decide without assistance on the granting of pardon or did he base his decision on a recommendation by a group of experts?

11. He inquired whether a mentally ill person could be condemned to death and how the degree of mental illness of an accused was determined.

12. He welcomed the fact that there had been no executions in Morocco since 1982, but wished to know how many persons had been sentenced to death in the same period and were currently awaiting execution or pardon. According to Amnesty International, 16 persons had died since 1982 while in the custody of Moroccan authorities, possibly as a result of torture. According to the press and various other sources, almost half of the inmates of Tazmamart prison had died in detention. He inquired whether those cases had been investigated and whether any officials had been prosecuted, found guilty and punished in that connection.

13. In relation to paragraph 4 of general comment 6 (16) concerning specific and effective measures to be taken by States to prevent the disappearance of individuals, he quoted an Amnesty International report which stated: "A number of disappearances have been reported in Morocco over the years and several people of Western Saharan origin are also alleged to have disappeared following their arrest by Moroccan security forces". The Amnesty International report further stated: "The use of garde à vue detention has facilitated such disappearances. As already indicated, there has been widespread abuse of the garde à vue provision". Allegations had also been made concerning persons held incommunicado in the Derb Moulay Cherif detention centre and the Tazmamart prison. The Amnesty International report further indicated that the family of General Oufkir, who had allegedly committed suicide after an attempted coup d'état in 1972, had been detained and had disappeared. In 1987, four of his sons had escaped after 15 years of incommunicado detention. They had later been re-arrested, but had contacted a French lawyer, Maître Kiejman, who had subsequently taken their case to the King. As a result, the King had ordered that the family should be reunited, and had laid the blame on incompetent subordinates. In that connection, it would be useful for the Committee to know what means were available to families who wished to trace disappeared relatives or arrange for a detained relative to be brought immediately before a judge. Was there any government body empowered to investigate allegations of disappearances and, if so, what had been its findings? Had any officials suspected of involvement in disappearances been prosecuted and convicted? Had those responsible in the Oufkir case been identified and convicted, and had compensation been awarded to the General's family?

14. Referring to paragraph 7 of general comment 6 (16) concerning procedural guarantees with respect to the death penalty, he requested clarification in connection with allegations of procedural irregularities, such as persons having been condemned to death in absentia, without legal assistance or without the benefit of witnesses. If such irregularities occurred, could the accused be released immediately?

15. Regarding the right to life, he inquired whether abortion was permitted in Morocco and, if so, in what circumstances.

16. In connection with paragraph 2 of general comment 6 (16) concerning the duty of States to avert the danger of war, he wished to know the number of victims claimed by the conflict in Western Sahara.

17. In connection with paragraph 3 of general comment 6 (16), he requested further information on the measures taken to educate the security forces in order to avoid indiscriminate and arbitrary killings, especially during public demonstrations. In that connection, he asked how many deaths had occurred when the police had fired on students supporting the Palestinian cause during the 1984 rioting in Fez.

18. Ms. CHANET, associating herself with the points raised by Mr. Aguilar Urbina and Mr. Pocar, said that it was uncontested that 16 deaths of persons held in police custody had occurred between 1985 and 1990. Investigations and autopsies must have been carried out in those cases, as required by Moroccan law, and she inquired what findings had emerged from them.

19. In relation to article 6 of the Covenant, she associated herself with the Committee members who had asked for an exhaustive list of crimes carrying the death penalty, clarification as to the precise meaning of "crimes against the well-being of the Nation" and information concerning the number of persons who had been condemned for that crime.

20. The Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights, which had been dealing with disappearances in Morocco for a long time, had stated in its report of January 1990, as in previous reports, that it had been unable to obtain any information from the Government that might elucidate those disappearances. However, Mr. Benhima had indicated that his Government was ready to co-operate with the Commission in that respect. She would welcome information on the form which that co-operation might take and any new facts the delegation could provide on the disappeared persons.

21. Lastly, she wished to know what specific regulations governed the use of firearms by police during public demonstrations.

22. Mr. FODOR noted with satisfaction that there had been no executions in Morocco since 1982, although the number of crimes mentioned in the report as carrying the death penalty seemed excessive. He was particularly concerned by those referred to in paragraph 39 under sub-items (i) and (k). What specific crimes were those described as being "against the well-being of the Nation"?

23. According to the information made available, the police had opened fire on demonstrators, particularly in 1981, 1984 and 1988, killing a large number of people. In what circumstances and according to what rules were the police and security forces authorized to open fire?

24. Mr. EL-SHAFEI said that, as the concept of "crimes against the well-being of the Nation" appeared to be very broad, a precise definition was needed.

25. Returning to the matter of the use of force and firearms against demonstrators, as Morocco participated in conferences on crime prevention, and in particular the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, its representatives would doubtless inform their authorities that, by subscribing to United Nations decisions, Morocco committed itself to certain principles. Where there was excessive use of firearms resulting in a number of deaths, the Committee would examine the compatibility of that practice with the provisions of article 6 of the Covenant. The questions were necessary because the report lacked clarity.

26. Mr. PRADO VALLEJO endorsed the comments by Mr. Aguilar Urbina and Mr. Pocar concerning the expression "crimes against the well-being of the Nation" and asked what specifically was meant by it and who was responsible for interpreting it. He was also puzzled by the list of capital offences given in sub-item (k) of paragraph 39, and asked for further explanation.

27. In connection with deaths caused by the police, as the right to life was not enshrined in Moroccan legislation, in spite of being provided for in the Covenant, he wondered how that right was guaranteed. Over 600 deaths were said to have occurred between 1981 and 1984 (although the Moroccan Government's own figures were much lower) as a result of people being fired on by the police. What instructions did the police have regarding the use of firearms? Since the State had a duty to investigate deaths caused by the police, had any investigations been carried out in those cases?

28. Deaths during detention often occurred when prisoners were held incommunicado, a condition which was not the responsibility of any particular judicial authority and consequently open to abuse, not only in Morocco but in many other countries as well. It was important, therefore, that the Committee should know whether such deaths had ever been investigated. Ms. Chanet had referred to the requirement that autopsies should be carried out to establish the cause of deaths occurring in detention, but had autopsies ever been carried out on people who had died while held incommunicado? Had any investigations been carried out into such occurrences and, if so, what were the results? In addition, were any political detainees among those who had died in such circumstances?

29. He endorsed the concern expressed with regard to the many persons reported to have disappeared, particularly in Western Sahara. Such information had been supplied by a number of sources and the State party had an obligation to check it. The Committee wished to know what its findings had been, given that the fate of those concerned was still not known to their families.

30. Mrs. HIGGINS said that Mr. Prado Vallejo had spoken of the potential for abuse when persons were held incommunicado; there was also a potential for disappearances or deaths to occur when persons were held at secret locations. She therefore asked the Moroccan delegation to list the detention centres for the holding of persons charged with offences against the security or well-being of the State and to inform the Committee what detainees were held at the Kalla M'Gouna centre.

31. Mr. ATMANI (Morocco), replying first of all to the questions raised by Mr. Pocar, said that crimes carrying the death penalty were those listed in the Criminal Code. There were no crimes other than those in the Code which justified the death penalty.

32. To explain the meaning of the expression "crimes against the well-being of the Nation", the Dahir of 29 October 1959 had to be seen in the context of the circumstances which had given rise to its promulgation. With the dismantling of United States bases in Morocco in 1959, toxic mineral oils and detergents, used for cleaning jet engines, had been offered for sale, and traders had mixed the oil with vegetable oil and sold it to poor people, particularly in Meknès and Sidi Kacem. Although it had been a very lucrative

operation for all the traders concerned, over 26,000 people had been paralysed, and the catastrophe had been considered a national disaster. Many of those victims were still walking on crutches. The operation had not been covered by the Code of Commerce and there had been no legislative text which could be used to punish those responsible. Faced with a situation in which the crime could not be punished because technically it did not exist, the authorities had promulgated the Dahir of 29 October 1959 for the purpose. As a result a number of traders had been prosecuted and sentenced to death, but they had subsequently been pardoned; one of them now owned the largest oil refinery in Morocco. Since 1959 there had been no prosecutions under that Dahir because no similar catastrophe had occurred.

33. Pardon had existed in Morocco since the Dahir of 6 February 1958. An ad hoc committee presided over by the Minister of Justice or his deputy and consisting of a number of senior officials met at least seven times a year and its comments were submitted to the King. With the passing of that Dahir, a pardon could be granted only when a decision was irrevocable, but amnesty could be granted at any stage of the proceedings.

34. On the question of disappearances in the Sahara, as Morocco had always stated to the non-governmental organizations concerned, freedom of movement was fully respected in the south. The populations referred to had never been registered under the names given, and since many people had several first and family names, the authorities frequently found themselves working on the basis of incorrect information.

35. As far as General Oufkir was concerned, the fate of his children was a Moroccan affair and an appropriate solution would be found by the King. The affair should not be used for political or partisan ends.

36. Contrary to allegations and statements by Amnesty International, frequently quoted by a hostile press which failed to check its sources, civil trials in Morocco were conducted in accordance with the Code of Civil Procedure and criminal trials in accordance with the Code of Criminal Procedure. As the King had recalled in his historic declaration of 8 May 1990, Morocco was a State under the rule of law.

37. Abortion was prohibited in Morocco and subject to penalties under the Criminal Code. That Code also stated, however, that no penalty would be imposed if the health of the mother was such as to justify abortion, as in the French criminal code on which it was based.

38. The forces of law and order never opened fire on crowds without prior warning, which usually consisted of three shots into the air. When they did fire, it was always at the feet, unlike most other countries, and they only fired when forced to do so.

39. There were no political crimes in Morocco, although there were offences of opinion under the Dahir of 15 November 1958. Moreover, politically motivated crimes were recognized and included those perpetrated in order to replenish the funds of a political movement or facilitate the purchase of arms by a political movement. A crime against the external or internal security of the State was not a political offence but an ordinary offence under the jurisdiction of the ordinary courts.

40. The CHAIRMAN observed that a number of speakers had based their questions on the general comments of the Committee, which were the fruits of the Committee's experience in its examination of reports and of the jurisprudence that had evolved as a result of the consideration of communications.

41. While he appreciated the replies given by the Moroccan delegation regarding the circumstances which had led to the promulgation of the Dahir of 29 October 1959, it should be clear that the questions put to Morocco had also been asked of other States parties where crimes were referred to in such vague terms that it was impossible to say what actions might constitute such crimes. One such example was the law against anti-social behaviour in Sweden which had been repealed after the Committee had expressed its concerns during its discussion of Sweden's report.

42. Mr. AGUILAR URBINA expressed regret that no specific information had been given to the questions raised by himself, Mr. Prado Vallejo and Mr. Pocar. They had wished to know what specific crimes were covered by the Dahir of 29 October 1959, and had sought a definition of those crimes. Information had also been requested regarding article 201 of the Criminal Code, but it had not been provided, which was disturbing in view of the possible retroactive application of a sentence. Was there a provision in Morocco which enabled criminal law to be applied retroactively, particularly when it involved the death sentence? In connection with sub-item (k) in paragraph 39 of the report, he wondered whether the offence referred to was punishable by death even if life was not endangered.

43. Mr. NDIAYE said that the relations between his country and Morocco were taken into account in other forums, but they were not directly relevant to the Committee, whose members sat as individual experts.

44. The consideration of reports by States parties was extremely important for the purpose of elucidating the human rights situation in the country concerned and instituting a dialogue. States parties were required to provide specific information which the members of the Committee took into account in seeking ways to promote human rights. No country was a Utopia in which all human rights were safeguarded and there were always some difficulties, which varied in severity. The questions raised by various speakers concerning the death penalty were based on the information given in paragraph 39 of the report, in which a number of crimes that carried the death penalty were listed. The word "include" inferred that there were others. When requested to inform the Committee of the specific provisions of the Criminal Code with respect to the death penalty, the Moroccan delegation had denied their existence, thus contradicting what was said in paragraph 39 of the report.

45. The Moroccan representative had stated that difficult circumstances had forced the Government to enact retroactive legislation, yet article 4 of the Constitution stated that the law could not have retroactive effect. He asked which of those positions was the true one. If the Moroccan delegation was unable to answer questions immediately, it should request an opportunity to provide the information subsequently, for it was in everyone's interest that precise answers should be given.

46. The CHAIRMAN said that that applied to a number of very important questions raised under article 6 of the Covenant, such as the measures applied with respect to the Oufkir family. It was unsatisfactory to dismiss the situation by saying that the media made use of the incidents concerned in a particular way. It was the Committee's duty to raise the matter in terms of the Covenant.

47. Mr. MYULLERSON recalled that the representative of Morocco had stated that the fate of the Oufkir family was an internal matter for Morocco. However, it was inappropriate to dismiss a case on the ground that it was an internal affair of the State when it came within the context of an article of the Covenant. It was stated in article 14 of that instrument that everyone was entitled to be tried without undue delay, while article 9 provided guarantees for the right of everyone to liberty and security of person. He was not alleging that those articles had been violated, but if the Committee raised questions concerning the application of those or any other articles of the Covenant, the matter could not be considered a mere internal affair of the State.

48. Mr. WENNERGREN associated himself with Mr. Myullerson's comments. The Moroccan representative had given the impression that the question of the Oufkir family was a taboo subject which could not be discussed. The same applied to questions concerning deaths that had taken place in detention centres, and possible investigations on them. He would revert to those questions during the discussion on articles 7 and 10 of the Covenant. The matter of the Oufkir family might be a Moroccan affair, but it was also a matter under the Covenant that concerned the rights of the human beings belonging to that family, and the Committee must ask questions about it. He would appreciate it if the Moroccan delegation would inform the Committee why it was unwilling to answer such questions.

49. Mr. AGUILAR URBINA said he had understood the representative of Morocco to say that there were no crimes subject to the death penalty other than those mentioned in the Criminal Code, but he had then gone on to refer to the Dahir adopted following the sale of polluted oil, and to an earlier Dahir. He asked whether those Dahirs had become part of the Criminal Code or whether they were deemed to be a law or a decree. He had been unable at the previous meeting to understand clearly the hierarchy of the various texts in Morocco.

50. The Committee's consideration of reports by States parties was not in the nature of an inquisition but was a means of co-operating with the State in order to help it to ensure the full enjoyment of human rights by its population. It had rightly been pointed out that there was no human rights Utopia, but the Committee's desire was to help in coming as close as possible to that ideal. Members of the Committee had requested some information on the case of the Oufkir family about which they had read in the press. Under article 2 (1) of the Covenant, each State party undertook to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and, under article 3 (a), to ensure that any person whose rights or freedoms as recognized in the Covenant were violated would have an effective remedy. Under article 3, States parties undertook to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant. As a party to the Covenant, Morocco had an obligation to the international community to respect

those rights, which could not be considered a purely Moroccan affair. The Committee's task was to help States to ensure the full enjoyment of those rights, and it was necessary to have a sincere and frank dialogue. Its questions were designed to discover what problems countries were facing, and they were addressed to all States for the well-being of their peoples.

51. Mr. PRADO VALLEJO recalled that the Latin American region to which he belonged had experienced some extremely serious human rights problems, which had happily been partly overcome through the democratization that had occurred in most countries of the region. In the Santa Cruz Declaration, the Latin American countries had proclaimed that human rights were not an internal matter under the exclusive jurisdiction of the State; that concern expressed about human rights did not constitute interference in the internal affairs of States; and that human rights were jus cogens and therefore took precedence over domestic law, so that even States that had not ratified the Covenant were bound by the norms and principles of human rights. The Moroccan position in that respect stood in stark contrast to that of Latin America. During the entire period in which he had served on the Committee the present occasion was the first on which a State party had claimed that a human rights issue was an internal matter. The Moroccan delegation had been made aware that the Committee desired a constructive dialogue. It had been pointed out that the Committee was not a court of law but that what it was seeking was the implementation of the Covenant, and that was why it was interested to know whether States experienced any difficulties in such implementation. Under article 40 of the Covenant, States parties undertook to submit reports on the measures they had adopted which gave effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. Under paragraph 2 of that article, States were required to indicate in those reports the factors and difficulties, if any, affecting the implementation of the Covenant. That was the objective of the Committee's dialogue with delegations of States parties. He hoped that it would still be possible to have a constructive dialogue with the Moroccan delegation. In expressing its concern about events in a particular country, the Committee merely wished the State to fulfil the obligations it had assumed when ratifying the Covenant, first and foremost among which was the obligation to bring domestic legislation and action into line with international legislation. It was aware that there might be some difficulties, but the delegation must understand that the Committee was endeavouring in a constructive spirit to discover what those difficulties were and what steps were to be taken to implement the Covenant.

52. Mr. ANDO endorsed the comments of the Chairman and subsequent speakers. The Committee was merely discharging its duty under the Covenant, which had been voluntarily ratified by many States parties, including Morocco. Some of its questions might not be pleasing to everyone, but its purpose was not to criticize the State party but merely to discover whether there were any human rights problems in the country concerned and, if so, to help to solve them.

53. Mr. ATMANI (Morocco) said that the law governing the punishment of persons responsible for crimes against the well-being of the Nation had been adopted on 29 October 1959, two years after the country had acceded to independence. Under the Protectorate, there had been no National Assembly to pass laws; they had been promulgated by the King by dahir. The question as to whether a dahir constituted a decree or a law had never been discussed. The one in question had been promulgated in accordance with tradition as

corroborated under the Protectorate, and had thus become part of the normal legislation. The Criminal Code had appeared in 1962 and had been adopted in the same manner as the dahir, since the National Assembly had not been established until 1963. There was therefore no contradiction between the two texts. Under the Protectorate, there had been a Government Council controlled by the directors of various ministries and departments and delegates of the Grand Vizier, who were not elected officials but persons nominated by the Government, and who had no representative character.

54. Since 1959, there had been no prosecutions under the dahir of that year other than those he had indicated, and its retroactive nature was therefore irrelevant. There had been a protest movement even when the Supreme Court had met in 1959, and because of some hesitation on the part of the Court the King had released the convicted persons and ended the discussion.

55. The question of the Oufkir family was not a matter in which international organizations or the State itself had been concerned, but one in which the lawyer in the case, at that time practising at the Paris Bar, had failed to respect the procedure laid down in the dahir which required him to contact a Moroccan lawyer and submit a request through the Ministry of Justice, and his action had therefore been declared inadmissible.

56. With respect to places of detention, the prison administration was organized along hierarchical lines, with a central prison, several rural open-air prisons and some civil prisons. None of the detention centres to which members of the Committee had referred was known to him. There was no Tazmamart prison coming under the prison administration. He was in no way trying to evade the issue, but either the reference to that prison had been erroneous or it was a detention centre of whose existence he was unaware, and he would have to refer the matter to his Government.

57. Mr. BENHIMA (Morocco) observed that some members of the Committee had recognized that they might be asking embarrassing questions. His delegation had come before the Committee in the expectation that not everything would be easy but it had been somewhat surprised at a number of the questions that had been asked, and it was not because it wished to avoid the issue that it was unable to give satisfactory answers. It was impossible, for example, to answer Mr. Aguilar Urbina's question as to the number of victims of the Saharan war. The conflict in its most violent form had almost ended and efforts were being made to secure a lasting peace. At such a time, it was impossible to take a census of the number of casualties.

58. The question about the number of detention centres was relevant, and if it had been included in the list of issues the necessary information could have been provided, but it was impossible for the delegation to give a specific reply on the spur of the moment without having prior notice of the question. With respect to Ms. Chanet's comments concerning the disappearance of Saharans, he had stated at the previous meeting that his Government had been surprised at the number of such disappearances and that an investigation was under way. The Saharan conflict had begun in 1976 and the non-governmental organizations and associations that had commented on the disappearances had not done so until the summer of 1982. They had taken place in areas in which no Moroccan troops had been stationed.

59. All the critical questions put by members of the Committee had been based on press articles and reports of non-governmental organizations, which could hardly be taken as gospel bearing in mind the hostility of the press towards his Government. That very attitude proved that the national press had freedom of expression even though it distorted the truth and was concerned with other than humanitarian issues.

60. Questions had been asked about deaths during detention. Amnesty International had raised the matter with the Moroccan authorities in February 1990 and its delegation had had lengthy and open discussions with the Moroccan authorities and had been given a report which included details of the cases concerned, most of which had been cases of hanging. In some cases, following a post-mortem examination, the coroner had found that death had resulted from violence leading to complications such as kidney failure. It had not been possible to discover who was responsible for those abuses, but a case of assault and battery involving unintentional homicide was before the court in Casablanca. Further cases under investigation included a suicide by hanging and a case in which a person had died after being arrested when already in a poor condition and taken to hospital, from which he had been transferred by his family, but there had been no indication that violence had been committed. He had an extensive list of officers who had been punished for acts of violence, including a lieutenant in the gendarmerie who had been sentenced to 10 years' imprisonment in 1988, another police officer to 24 days of rigorous imprisonment and six months of further imprisonment and two others to six months' imprisonment. There were a number of others who had been sentenced to varying periods of imprisonment for offences including rape, forcible entry into the home and arbitrary detention.

61. His delegation was prepared to give any available information in response to the Committee's questions provided that they were put in a manner that could readily be answered.

62. The CHAIRMAN suggested that when it was not possible to answer questions because of a lack of information, the Moroccan delegation should make that clear. The representative of Morocco had just given a series of answers to some of the questions that had been asked, thus demonstrating that it was possible to engage in a constructive dialogue, as was done with all States parties. It was customary that delegations without the necessary information to hand should inform the Committee that they wished to defer their answers until they had obtained it. When Committee members referred to allegations that had been made in the press or elsewhere, they did not present them as fact but merely sought to know the position with regard to them. It would have been open to the Moroccan delegation to say that some of the information was being investigated or that some of it was untrue, and that was the way in which States parties were expected to co-operate. The Committee's duty was to examine the situation in the light of the State party's report and the practical application of the laws in specific cases.

63. Mr. AGUILAR URBINA said that the Moroccan delegation had objected to the Committee's use of information supplied by non-governmental organizations. However, since the report itself referred to a visit to Morocco by Amnesty International (paragraph 40), he did not see why the Committee should not be able to use such information.

VI. Treatment of prisoners and other detainees (articles 7 and 10)

"(a) Have there been any complaints about torture or other mistreatment of prisoners or other detainees during the reporting period or any prosecutions or convictions under article 231 of the Criminal Code? (See paragraph 44 of the report.)

(b) Please provide information regarding prison régimes and conditions of detention in Morocco. Are the provisions of the Dahir of 11 April 1915 and the Dahir of 26 June 1930 fully compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners?"

64. Mr. ATMANI (Morocco) said that torture and inhuman or degrading treatment on a systematic basis were unknown in Moroccan prisons. There were occasional riots or attacks on prison officers but, even then, the prison authorities never used force systematically. Complaints of ill-treatment made by prisoners were submitted to the administrative authorities and, in serious cases, to the Ministry of Justice. Government officials who physically ill-treated prisoners were prosecuted, and such offences were always taken seriously. Any victim of ill-treatment could seek redress from the King's prosecutor or an examining magistrate, either directly or through a lawyer. A number of officials had been convicted of such offences in the past.

65. Prison conditions were principally regulated by the two Dahirs mentioned in the list of issues, although certain provisions of both had fallen into disuse. The treatment of prisoners had become much more humane, and ill-treatment as a disciplinary measure had been abandoned.

66. The Ministry of Justice was preparing a new law governing conditions of detention, which would be fully consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The prison population was growing rapidly owing to the rising crime rate, which was partly due to the population explosion and the country's economic problems. The Government did not have the resources to build more rural open-air prisons such as those at Ain Oumoumen, El Outita and El Ader. However, it had recently closed the El Laalou prison in Rabat and replaced it by a model prison in Salé.

67. Mr. FODOR, noting that paragraph 43 of the report referred to article 10 of the Moroccan Constitution, which dealt with unlawful arrest, detention or punishment, said that was surely more relevant to articles 9 and 10 of the Covenant than to article 7, which dealt specifically with torture.

68. Article 231 of the Moroccan Criminal Code stated that any official who committed "acts of violence" against an individual "without lawful reason" should be punished (see paragraph 44 of the report). What exactly constituted an "act of violence" and in what circumstances might there be a lawful reason for committing it?

69. Article 225 of the Moroccan Criminal Code stated that an official who committed an arbitrary act which undermined individual freedom or civil rights should be punished by loss of his own civil rights (see paragraph 45 of the report). Which civil rights could be lost in those circumstances, and for how long?

70. What were the rules governing interrogation procedures? Were the permitted procedures fixed by law, or were they embodied in instructions to the officers concerned?

71. In respect of article 10 of the Covenant, he noted that the King's prosecutor and the examining magistrate were obliged to visit prisoners at least once every three months (see paragraph 55 of the report). Could they receive complaints from prisoners during those visits?

72. Ms. CHANET said that she had a number of questions about conditions at the Tazmamart detention centre in southern Morocco. Members of the Moroccan delegation had said that they had no knowledge of the prison, but she hoped that they would be able to obtain information from their Government before the next meeting. If the prison was not controlled by the authorities to which the Moroccan representatives were answerable, then which authority did control it?

73. According to information before her - which had come not from the press, but from a prisoner at Tazmamart who had written to his wife in the United States - the prison was situated at a high altitude and was therefore very cold, yet the cells had no heating and no windows. Was that true? What was the general state of health among the prisoners?

74. It appeared that people could be held incommunicado in Tazmamart for many years. Was it true that some people had been held there since 1971, and that 27 people had died in detention? She had also been informed that people sentenced to five- or ten-year prison terms in 1972 had still not returned to their homes. Under Moroccan law, were prisoners always released as soon as their sentences were over, or could they be detained beyond that time for any reason?

75. Mr. AGUILAR URBINA said that he, too, was concerned about the conditions at Tazmamart prison. He noted that the Moroccan representatives had not exactly denied the existence of the prison, but had merely said that they did not know anything about it. Which authority was responsible for the prison, and did the King's prosecutor or the supervisory commissions described in paragraph 56 of the report have the right to visit it?

76. Noting that article 399 of the Moroccan Criminal Code laid down the death penalty for anyone guilty of "torture or barbarous acts" (paragraph 44 of the report), he asked whether that provision applied to officials, too. In the case of the members of the Oufkir family, the King himself had admitted that they had been ill-treated by incompetent subordinate officials; were those officials likely to be sentenced to death?

77. The report mentioned many articles of the Criminal Code, but it gave few indications of the penalties incurred for infringing them. Were those penalties laid down in the Criminal Code itself or, if not, where were they specified?

78. Turning to article 10, he thanked the Moroccan representative for the details he had given of officials who had been successfully prosecuted for various abuses. Finally, he wished to ask whether an individual could have recourse to the King's prosecutor or the supervisory commissions described in paragraph 56 on behalf of a relative who was in prison.

79. Mr. EL-SHAFEI agreed with Mr. Fodor that the scope of article 7 of the Covenant was much broader than that of article 10 of the Moroccan Constitution. Moreover, article 10 of the Constitution was surely incompatible with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Moroccan Government had signed in 1986. Did Morocco intend to ratify the Convention soon?

80. The Committee had received a number of detailed reports of incidents of torture during interrogation of suspects, giving the names of the victims, the dates and the type and duration of torture. What steps had the Government taken to investigate allegations of torture, and had it adopted any measures to prevent torture in the future? Could a suspect's lawyer be present during interrogation? He would also welcome further details of officials who had been prosecuted for torture, although he appreciated that the delegation had already provided some information on that point.

81. Mr. PRADO VALLEJO said that Morocco had a sound legal framework, which should prevent torture occurring, but there were clearly problems in putting the law into practice. Evidently, violations often occurred because the police were unaware of human rights issues. Did the police in Morocco receive any human rights training?

82. Were the United Nations Standard Minimum Rules for the Treatment of Prisoners applied in Morocco? He was particularly concerned with prisoners' living conditions and general state of health and with overcrowding in prisons. He was pleased to note that prison conditions were regulated by Dahirs dating from 1915 and 1913, but how were the provisions of those Dahirs enforced in practice? He hoped that the Moroccan representatives would provide as much information as they could immediately and would send any further details to the Committee as soon as possible.

83. Mr. WENNERGREN said, with reference to article 9 of the Covenant, that the members of the Oufkir family had been deprived of their liberty since 1972. What were the legal grounds for that deprivation of liberty?

84. According to information available to him, 20 prisons in Morocco, designed to hold 7,000 inmates, currently housed no less than 37,000 people. Such overcrowding inevitably led to enormous problems, not least in the provision of medical care. The Committee had also received reports of hunger-strikes and riots in some Moroccan prisons. Were those reports correct, and what were prison conditions really like?

85. Mr. POCAR asked for more information about the legal value of a confession. Could a confession made by a suspect while in police custody, rather than in court, be sufficient to secure conviction without further proof? He understood from reading article 291 of the Code of Criminal Procedure that that was, indeed, the case, but such a provision might tempt the police to use irregular methods to encourage a suspect to confess. Did a person under interrogation have the right to remain silent?

86. Had any cases come before Moroccan courts in which defendants had claimed that their evidence had been obtained by means of torture? Had such evidence ever been accepted by the courts? He would welcome further details of any such cases.

The meeting rose at 1.05 p.m.